

**WSR 11-20-074**  
**EMERGENCY RULES**  
**DEPARTMENT OF REVENUE**

[Filed October 3, 2011, 1:05 p.m., effective October 3, 2011, 1:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply:

- WAC 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally.
- WAC 458-20-19403 (Rule 19403) Single factor receipts apportionment—Royalties.
- WAC 458-20-19404 (Rule 19404) Financial institutions—Income apportionment.

Changes from the previous emergency rule filed May 27, 2011, under WSR 11-12-058 (Rules 19402 and 19403) and WSR 11-12-062 (Rule 19404) are as follows:

- The detailed discussion of the annual reconciliation process previously contained in Rule 19402 has been replaced with a reference to the department's form for submitting the reconciliation. Also, the cross references to the detailed discussion in Rule 19402 (that previously existed in Rules 19403 and 19404) have been replaced with similar language.
- The explanation of how interest applies to underpayments and overpayments as determined by the annual reconciliation has been clarified in all three rules.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Reasons for this Finding: An emergency adoption of these new rules is necessary because permanent rules cannot be adopted at this time.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

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

Date Adopted: October 3, 2011.

Alan R. Lynn  
Rules Coordinator

NEW SECTION

**WAC 458-20-19402 Single factor receipts apportionment—Generally. (1) Introduction.**

(a) Section 105, chapter 23, Laws of 2010 1st sp. sess. establishes a new apportionment method for businesses engaged in apportionable activities and that have nexus with Washington. The new apportionment method explained in this rule only applies to business and occupation (B&O) tax liability incurred after May 31, 2010. This rule does not apply to the apportionment of income of financial institutions taxable under RCW 82.04.290, which is governed by WAC 458-20-19404, nor the receipt of royalty income from granting the right to use intangible property under WAC 458-20-19403.

(b) Taxpayers may also find helpful information in the following sections:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19403 Single factor receipts apportionment — Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment — Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions — Income apportionment. This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** The following definitions apply to this rule:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(i) Example 1. Corporation A received \$2,000,000 in gross income from its world-wide apportionable activities, including \$500,000 in world-wide bona fide initiation fees deductible under RCW 82.04.4282. Corporation A's apportionable income would be \$1,500,000.

(b) "Apportionable activities" means only those activities subject to B&O tax under the following classifications:

- (i) Service and other activities,
- (ii) Royalties (see WAC 458-20-19403 for apportionment of royalties),
- (iii) Travel agents and tour operators,  
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- (iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent,
- (v) Stevedoring and associated activities,
- (vi) Disposing of low-level waste,
- (vii) Title insurance producers, title insurance agents, or surplus line brokers,
- (viii) Public or nonprofit hospitals,
- (ix) Real estate brokers,
- (x) Research and development performed by nonprofit corporations or associations,
- (xi) Inspecting, testing, labeling, and storing canned salmon owned by another person,
- (xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW,
- (xiii) Contests of chance,
- (xiv) Horse races,
- (xv) International investment management services,
- (xvi) Room and domiciliary care to residents of a boarding home;
- (xvii) Aerospace product development,
- (xviii) Printing or publishing a newspaper (but only with respect to advertising income),
- (xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income), and
- (xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xviii) of this subsection (2) if this special tax classification did not exist.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. The term includes personal income taxes if the gross income from apportionable activities is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(f) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **Apportionment general:** Persons earning apportionable income subject to B&O tax and that are also taxable in another state are entitled to determine their taxable income for B&O

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tax purposes by using the apportionment method provided in this rule. Taxable income is determined by multiplying apportionable income from each apportionable activity by its receipts factor.

(4) **Receipts Factor.** The receipts factor is a fraction that applies to all apportionable income for each calendar year. Separate receipts factors must be calculated for each apportionable activity taxed under a separate business and occupation tax classification.

(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the calendar year from engaging in an apportionable activity.

(b) The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year, less amounts that are attributed to states where the taxpayer is not taxable and at least some of the activity is performed in Washington.

(c) Example 2. XYZ Corp. is a Washington business, has no property or payroll outside of Washington, and performs all of its services inside this state. XYZ Corp. has gross income from apportionable activities that is attributed using the criteria listed in subsection (5) below as follows: Washington \$500,000; Idaho \$200,000; Oregon \$100,000; and California \$300,000. XYZ Corp. is subject to Oregon corporate income tax, but does not owe any California or Idaho business activities taxes. The \$200,000 that would be attributed to Idaho is excluded from the denominator because XYZ Corp. performs the services in Washington, and it is not subject to actual Idaho business activities taxes and does not have substantial nexus with Idaho under Washington thresholds. Although California does not impose a business activities tax on XYZ Corp., XYZ Corp. does have substantial nexus with California using Washington thresholds (more than \$250,000 in receipts). Therefore, the California attributed income is not excluded from the denominator. The Oregon receipts remain in the denominator because XYZ Corp. is subject to Oregon corporate income taxes. The receipts factor is 500,000/900,000 or 55.56%.

(d) Example 3. The same facts as Example 2 except all of XYZ's property and payroll are located in Oregon, and XYZ Corp. performs no activities in Washington related to the \$200,000 attributed to Idaho. In this situation, the

\$200,000 is not excluded from the denominator. The receipts factor is 500,000/1,100,000 or 45.45%.

(5) **Attribution of income.** Income is attributed to states based on a cascading method. That is, each receipt is attributed to a state based on a series of rules. These rules are:

(a)(i) If a taxpayer can reasonably determine the amount of apportionable receipts related to the benefit of the services received in a state, that amount of apportionable receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the benefit among states. The result determines the receipts attributed to each state. A taxpayer receives the benefit of a service in this state when:

(A) The service relates to real property that is located in this state;

(B) An apportionable service relates to tangible personal property that is located in this state at the time the service is received; or

(C) The service does not relate to real or tangible personal property, and:

(I) The service is provided to a person not engaged in business who is physically present in this state at the time the service is received; or

(II) The service is provided to a person engaged in business in this state, and the service relates to the person's business activities in this state.

(ii) Examples.

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(A) Example 4. Director serves on the board of directors of DEF, Inc. DEF, Inc. is commercially domiciled in State Z. DEF, Inc. is Director's customer. DEF is engaged in business in State Z, and the director's services relate to the management of DEF, Inc. Therefore, DEF, Inc. receives the benefit of Director's services in State Z.

(B) Example 5. ABC is headquartered outside of Washington and provides retail services to customers in Washington, Oregon, and Idaho. When those customers fail to pay ABC for its services, ABC contracts with Debt Collector located outside of Washington to collect the debt. ABC pays Debt Collector a percentage of the amount collected. ABC is engaged in business in Washington and the activities of Debt Collector relate to that business, therefore the benefit of the service is received by ABC in Washington when Debt Collector obtains payment from debtors located in Washington.

(C) Example 6. The same facts as Example 5, except Debt Collector is paid a fixed amount per month regardless of the total amount collected from debtors, and the debtors are located in Idaho and Washington. If Debt Collector can reasonably determine the proportion of the benefit received by ABC in each state, then that proportion of the fixed amount is the benefit received in each state. Depending on the circumstances, reasonable means to determine the proportion received in each state could be amounts recovered.

(b) If a taxpayer is unable to separately determine the benefit of the services in specific states under (a), and as a result the customer received the benefit of the service in multiple states, the apportionable receipts of the business is attributed to the state in which the benefit of the service was primarily received. Primarily means in this case more than 50%.

(i) Example 7. The same facts as Example 6, except Debt Collector cannot reasonably determine the portion of the benefit received in each state, Debt Collector will have to use the remaining rules in (c) through (g) of this subsection (5) to attribute the income from ABC.

(c) If the taxpayer is unable to attribute gross income of the business under (a) or (b) of this subsection (5), gross income of the business must be attributed to the state from which the customer ordered the service.

(d) If the taxpayer is unable to attribute gross income of the business under (a), (b), or (c) of this subsection (5), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(e) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), or (d) of this subsection (5), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(f) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), or (e) of this subsection (5), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (i) Shown in the taxpayer's business records maintained in the regular course of business; or (ii) obtained during consummation of the sale or the negotiation of the contract for services, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), (e) or (f) of this subsection (5), gross income of the business must be attributed to the commercial domicile of the taxpayer.

**(6) Reporting methods.**

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the most recent receipts factor the taxpayer has.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current tax year information.

(c) Reconciliation. Regardless of how a taxpayer reports its taxable income under subsection (a) or (b) of this subsection, when the taxpayer has the information to determine the receipts factor for an entire calendar year, it must file a reconciliation and either obtain a refund or pay any additional tax due. The reconciliation must be filed on a form approved by the department. In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply to any additional tax that may be due.

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

**NEW SECTION**

**WAC 458-20-19403 Single factor receipts apportionment—Royalties.** (1) **Introduction.** Effective June 1, 2010, section 105, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning the gross income from

royalties. This rule addresses how such gross income must be apportioned when the business receives royalty payments from both within and outside the state.

(a) This rule is limited to the apportionment of gross income from royalties. This rule does not apply to apportionment or allocation of income from any other business activity.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment — Generally. This rule describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment — Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions — Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(2) **Definitions for the purposes of this rule.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) "Apportionable activity" means those activities conducted by a person in the business of receiving gross income from royalties.

(b) "Apportionable income" means gross income of the business generated from engaging in apportionable activity, including income received from apportionable activity performed outside Washington if the income would be taxable under the business and occupation tax if received from activities in Washington less any allowable exemptions and deductions under chapter 82.04 RCW.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state by a person. The term includes taxes measured in whole or in part on net income or gross income or receipts. In the case of sole proprietorships and pass-through entities, the term includes personal income taxes if the gross income from royalties is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not referred to as a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

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(e) "Gross income from royalties" means compensation for the use of intangible property, including charges in the

nature of royalties regardless of where the intangible property will be used. "Gross income from royalties" does not include compensation for any natural resources, the licensing of pre-written computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

(f) "Intangible property" includes: copyrights, patents, licenses, franchises, trademarks, trade names and similar items.

(g) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(h) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(iii) "Not Taxable" with respect to a particular state means the taxpayer is not actually subject to a business activities tax by that state on its income received from engaging in apportionable activities and that state does not have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **How does a taxpayer apportion its gross income from royalties?** A taxpayer earning gross income from royalties generated on or after June 1, 2010, must apportion such income when the taxpayer is taxable in another state. Gross income is apportioned to Washington by multiplying apportionable income by the receipts factor. The resulting amount of taxable income is then multiplied by the applicable tax rate.

(4) **What is the receipts factor?** The "receipts factor" is a fraction with the following numerator and denominator:

(a) Numerator: is the total gross income from royalties attributable to Washington during the tax year. Generally, a tax year is the same as a calendar year. For the purposes of this rule, tax years will be referred to as calendar years.

(b) Denominator: is the total gross income from royalties attributable to everywhere in the world during the calendar year, less amounts that are attributed to states where the taxpayer is not taxable if at least some of the apportionable activity is performed in Washington.

(5) **How are royalty receipts attributed to Washington?** To compute the numerator of the receipts factor, gross income from royalties is attributable to states as follows:

(a) Place of use: where the customer used the taxpayer's intangible property. If a taxpayer can reasonably determine the amount of royalty receipts related to the use in a state, that amount of royalty receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the use of the intangible property among states.

(b) If a taxpayer is unable to separately determine the use of the intangible property in specific states under (a), and as a result the customer used the intangible property in multiple states, the royalty receipts are attributed to the state in which the intangible property was primarily used. Primarily means in this case more than 50%.

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(c) Office of negotiation: if the taxpayer is unable to attribute gross income to a location under (a) or (b) of this subsection (5), then gross income must be attributed to the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(d) Billing state: if the taxpayer is unable to attribute gross income to a location under (a), (b), or (c) of this subsection (5), then gross income must be attributed to the state to which the billing statement or invoices are sent to the customer by the taxpayer.

(e) Payment state: if the taxpayer is unable to attribute gross income to a location under (a), (b), (c), or (d) of this subsection (5), then gross income must be attributed to the state from which the customer sends payment to taxpayer.

(f) Customer's address: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), or (e) of this subsection (5), then gross income must be attributed to the state where the customer is located as indicated by customer's address:

(i) As shown in the taxpayer's business records maintained in the regular course of business; or

(ii) Obtained during negotiation of the contract for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) Taxpayer's domicile: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), (e), or (f) of this subsection (5), then gross income must be attributed to the commercial domicile of the taxpayer.

(6) **Examples.** Examples included in this subsection identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(a) **Example 1:** Taxpayer has its domicile in California and runs a national restaurant franchising business. Taxpayer enters into a contract with Company A under which Taxpayer licenses the right to use its trademark to Company A's so that Company A can display that trademark on its restaurant, menus, marketing materials, etc. Company A has a single restaurant that is located in Washington. Company A pays Taxpayer \$500,000 per calendar year for the right to use the trademark at its restaurant in Washington. Pursuant to the first sourcing rule, the intangibles (trademark) are used in Washington. Therefore, Taxpayer would attribute the \$500,000 in receipts from Company A to Washington.

(b) **Example 2:** Same facts as Example 1 except Company A in a single contract receives the right to use Taxpayer's trademark in as many restaurants as it wants in Washington and Idaho and pays \$500,000 for each restaurant when the restaurant opens and each calendar year thereafter. Company A opens two restaurants in Idaho and one in Washing-

ton. Taxpayer would attribute \$500,000 it received from Company A to Washington and \$1,000,000 to Idaho.

(c) **Example 3:** Same facts as Example 1 above, except that Company A now has many locations in Idaho but still only one in Washington. Further, Company A enters into a new contract with Taxpayer under which Company A must now pay \$1,500,000 per calendar year for the exclusive and unlimited right to the use of the trademark in Idaho but only a single location in Washington. Because the intangible is used in more than one state, but is primarily used in Idaho, Taxpayer would attribute all receipts received from Company A, (i.e. \$1,500,000) to Idaho pursuant to the second sourcing rule.

#### (7) **What data can be used for calculating the receipts factor?**

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the most recent receipts factor the taxpayer has.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current tax year information.

(c) Reconciliation. Regardless of how a taxpayer reports its taxable income under subsection (a) or (b) of this subsection, when the taxpayer has the information to determine the receipts factor for an entire calendar year, it must file a reconciliation and either obtain a refund or pay any additional tax due. The reconciliation must be filed on a form approved by the department. In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply to any additional tax that may be due.

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

#### NEW SECTION

#### **WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.**

(a) Effective June 1, 2010, RCW 82.04.460 was amended to change Washington's method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective after May 31, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment — Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment — Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the period January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions — Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

**(2) Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must allocate and apportion its income taxable under RCW 82.04.290 as provided in this rule. Any other income from apportionable activities must be apportioned pursuant to WAC 458-20-19402 (Single factor receipts apportionment — Generally) or WAC 458-20-19403 (Single factor receipts apportionment — Royalties). "Apportionable income" means gross income taxable under RCW 82.04.290, including income taxable under RCW 82.04.290 attributed outside this state if the income would be taxable under RCW 82.04.290 if attributed to this state, less the exemptions and deductions allowable under chapter RCW 82.04. All gross income that is not apportioned must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the receipts factor to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection (2) apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity related to this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

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(c) "Commercial domicile" means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one

of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(f) "Department" means the department of revenue.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) "Gross income of the business," "gross income," or "income":

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, gains realized from trading in bonds or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. Provided, that for the purposes of this rule, gross income of the business is limited to income taxable under RCW 82.04.290; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of this subsection (3)(i) affiliated means the affiliated person and the financial institution are under common control. Common control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in

stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) "Income taxable under RCW 82.04.290" means the gross income of the business taxable under the service and other activities or international investment management services classifications.

(k) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(l) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(m) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(n) "Participation" means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(o) "Person" has the meaning given in RCW 82.04.030.

(p) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) "Taxable in another state" means either:

(i) The taxpayer is subject to business activities tax by another state on its income taxable under RCW 82.04.290; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income taxable under RCW 82.04.290, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

For purposes of this subsection (3)(s), "business activities tax" means a tax measured by the amount of, or economic

results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a retail sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) "Taxable period" means the calendar year during which tax liability is incurred.

**(4) Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. Separate receipts factors must be determined for business and occupation tax under the service and other activities and the international investment management services classifications.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state. Interest and fees on loans secured by commercial aircraft that qualifies for the exemption from business and occupation tax under RCW 82.04.43391 are not included in either numerator or the denominator of the receipts factor.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside



this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection (4), the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (k)(i) of this subsection (4) that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the

arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(i)(A) and (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this subsection (4)(k)(ii), the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection (4), the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(ii)(A) or (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection (4), it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was

properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010.

**Reviser's note:** The typographical 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 11-21-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-263—Filed October 5, 2011, 2:22 p.m., effective October 5, 2011, 9:00 p.m.]

Effective Date of Rule: October 5, 2011, 9:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000F; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Continues the late fall mainstem commercial season for non-Indian fisheries. In-season run size forecasts indicate harvestable fish remain available to commercial fisheries. Impacts to ESA-listed salmonid stocks are expected to remain within the limits allocated to non-Indian fisheries. The seasons are consistent with the 2008-2017 interim management agreement. The regulation is consistent with compact action of July 28, 2011, and October 4, 2011. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 5, 2011.

Joe Stohr  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000G Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

### **1. Mainstem Columbia River**

a. SEASON: 9 PM Wednesday, October 5, to 7 AM Thursday, October 6, 2011.

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Grays, Elokomin-B, Cowlitz, Kalama-B, Lewis-B, Washougal and Sandy Rivers as applicable.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of four (4) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

### **2. Blind Slough/Knappa Slough Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

### **3. Tongue Point/South Channel Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open 4 PM to 10 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

### **4. Deep River Select Area.**

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 28, 2011. 4 PM to 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

**5. Quick Reporting:** 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. October 5, 2011:

WAC 220-33-01000F Columbia River season below Bonneville. (11-257)

**WSR 11-21-003**  
**EMERGENCY RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**

[Filed October 5, 2011, 3:14 p.m., effective October 13, 2011]

Effective Date of Rule: October 13, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This is a consecutive emergency rule filing for the same rule filed on June 14, 2011. RCW 34.05.350(2) prohibits consecutive emergency rules if the content is identical or substantially similar, except that an agency may adopt such an emergency rule if the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. Here, the commission is filing notice of its intent to adopt the rule as a permanent rule at its February 2012, meeting. In deciding to adopt this emergency rule, the commission concluded that it needs additional time to study the effect of the emergency rule to inform whether it needs to adopt the permanent rule.

Purpose: The commission's 2011-2013 budget has forced the commission to reduce staff. As a result, the executive director can no longer assure that she can review applications for completeness within fourteen days or issue standard development review decisions within seventy-two days or expedited review applications within thirty days, which the commission's rules specify. The temporary rule does not propose new hard time periods, but rather sets the fourteen day and seventy-two day time periods as goals. The executive director anticipates meeting these time periods in most cases, but needs the flexibility of surpassing them to manage overall workload and staff resources.

Citation of Existing Rules Affected by this Order: Amending 350-081-0036, 350-081-0042, and 350-081-0054.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 196.150, 16 U.S.C. § 544e (c)(1).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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: The commission has reduced its planning staff from 4.5 FTE down to 1.5 FTE during the past biennium. The commission's 2011-2013 budget has forced the commission to further reduce staff. In March 2011, the commission adopted rule changes that eliminated

hard deadlines in many of its rules as a way to manage overall workload and staff resources. At that time, the commission did not want to change the time periods for issuing development review decisions. However, as a result of the reduction in staff that will be necessary in response to the 2011-2013 budget, the commission must now change those time periods too.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: September 13, 2011.

Nancy A. Andring  
Administrative Assistant

Amendatory Section**350-081-0036****Acceptance of Application**

~~Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness and if complete, shall accept the application for review.~~

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing ~~within 14 days of receipt of the application.~~ The Executive Director shall review supplemental application materials ~~within 14 days after receipt of the materials~~ to determine if the application is complete.

(2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

(3) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental materials within 14 days of receipt. The 14-day time periods in this rule are effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

### Amendatory Section

#### **350-081-0042**

##### **Decision of the Executive Director**

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-81-040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81. As a goal, the Executive Director shall attempt to issue a decision within 72 days after acceptance of the application, within 72 days after acceptance of the application except in one or more of the following situations:

~~(a) The applicant consents to an extension of time.~~

~~(b) The Executive Director determines that additional information is required pursuant to Commission Rule 350-81-040.~~

~~(c) The Executive Director determines that additional information is necessary to evaluate land use issues and the impacts of the proposed use to scenic, cultural, natural, and recreation resources.~~

~~(d) Unforeseen circumstances including, but not limited to, weather, illness, etc.~~

(4) The Executive Director shall send a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-81-040. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed

with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) The 72-day time period in this rule is effective retroactively to all development review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

### Amendatory Section

#### **350-081-0054**

##### **Procedures for Expedited Review Process**

(1) Applications

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-054.

(b) The Executive Director shall accept and review the application pursuant to 350-81-054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-81-032(5). They shall also include elevation drawings if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

(2) Acceptance of Application

~~(a) Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness, and if complete, shall accept the application for review.~~

~~(b) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall review supplemental application materials within 14 days after receipt of the materials to determine if the application is complete.~~

(c) As a goal, the Executive Director shall attempt to accept the application as complete or notify the applicant of omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall attempt to review supplemental application materials within 14 days of receipt of the materials.

(3) Notice of Development Review

(a) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(A) The name of the applicant;

(B) The general and specific location of the subject property;

(C) A brief description of the proposed action;

(D) The deadline for rendering a decision; and

(E) The deadline for filing comments on the proposed action.

(b) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(c) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(d) The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), libraries and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

(e) A copy of the notice shall be filed in the records of the Commission.

(4) Comment Period: Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

(5) Written Decision

(a) In making a decision on a proposed use or development the Executive Director shall:

(A) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(B) Consider information submitted by the applicant and all other relevant information available;

(C) Consider all comments submitted pursuant to 350-81-054(4); and

(D) Solicit and consider the comments of the Forest Service.

(b) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(A) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(B) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(c) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 ~~within 30 days after acceptance of the application.~~ As a goal, the Executive Director shall attempt to issue a decision within 30 days after acceptance of the application.

(d) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) Notice of Decision and Opportunity to Appeal

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, landowners

within 200 feet of the perimeter of the subject parcel, and anyone who submitted comments pursuant to 350-81-054(4).

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-70.

(7) Expiration of Approvals. Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-81-044, above).

(8) Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-81-046, above).

(9) The time periods in this rule are effective retroactively to all expedited review applications that have been submitted to the Commission and for which the Executive Director has not made a decision.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 11-21-005  
EMERGENCY RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed October 6, 2011, 10:29 a.m., effective October 6, 2011, 10:29 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend sections of chapter 170-290 WAC, Working connections and seasonal child care (SCC) subsidy programs, to comply with section 11 of ESSB 5921, enrolled as chapter 42, Laws of 2011 1st sp. sess. that took effect on July 1, 2011. Rules for the SCC programs are revised to:

- Require individuals who apply for or receive SCC subsidies to seek department of social and health services (DSHS) child support enforcement services, unless the individual has good cause not to cooperate, as a condition of receiving department of early learning (DEL) child care subsidy benefits; and
- Provide a six-month eligibility period before a family receiving SCC benefits must recertify his or her income eligibility, although families must continue to report changes provided in the rules. The six-month provision will apply so long as enrollment in SCC is capped.

This second emergency rule continues the same provisions as the first emergency rule on the same subject in WSR 11-14-066, but only for the SCC program, while DEL takes further steps toward permanent adoption. Comparable emergency rules for the WCCC program were made permanent under WSR 11-18-001.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-3565, 170-290-3610, and 170-290-3660.

Statutory Authority for Adoption: RCW 43.215.060; chapter 43.215 RCW; section 501, chapter 265, Laws of 2006 (uncodified).

Other Authority: ESSB 5921 (chapter 42, Laws of 2011 1st sp. sess.); 2ESHB 1087 (chapter 50, Laws of 2011 1st sp. sess.); EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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: The legislature enacted ESSB 5921 to maintain compliance with and accountability for the federal temporary assistance for needy families (TANF) block grant requirements under the Personal Responsibility and Work Opportunity Act of 1996, and to further reduce costs for the state's WorkFirst program. (WorkFirst is the state's "welfare-to-work" program encompassing several state agencies and programs, including certain DEL child care programs.)

ESSB 5921 was adopted as a WorkFirst "redesign" measure to restructure the program for better efficiency, to reduce fraud and to lower overall costs. According to the legislature's 2011-13 Operating Budget Overview - 2ESHB 1087: *"During fiscal year 2012 (July 1, 2011, through June 30, 2012) the WorkFirst programs are to be restructured and become performance based ... The budget also increases the number and visibility of fraud detection in public assistance programs through more staff and increased technology."*

The overview document further describes savings estimated at \$62.9 million through TANF, WorkFirst and child care subsidy changes contained in ESSB 5921 and 2ESHB 1087:

***"TANF REDUCTIONS - \$62.9 MILLION SAVINGS!"***

*"The proposed budget makes several changes to the cash benefits program including: (1) implementing an income eligibility test for a care giver who is providing for a child outside of the child's home; and (2) applying the sixty-month time limit to any family where the parent is in the home. Major child care reductions include: (1) reduced child care for those whose WorkFirst participation is suspended; (2) moving to six-month certifications; and (3) requiring child support for Working Connections Child Care participants. WorkFirst savings is found through suspension of services and moving to performance based contracts. The budget estimates an \$11.8 million ending fund reserve to pay for any unforeseen costs."*

Section 11 of ESSB 5921 enacted two of the provisions noted in the budget overview document, by adding the following new subsections (2) and (3) to DEL's RCW 43.215.-135:

*"(2) As a condition of receiving a child care subsidy or a Working Connections Child Care subsidy, the applicant or recipient must seek child support enforcement services from the Department of Social And Health Services, Division of Child Support, unless the department finds that the applicant or recipient has good cause not to cooperate."*

*"(3) Except as provided in subsection (4) of this section, an applicant or recipient of a child care subsidy or a Working Connections Child Care subsidy is eligible to receive that*

*subsidy for six months before having to recertify his or her income eligibility. The six-month certification provisions applies only if enrollment in the child care subsidy or Working Connections Child Care program are capped."*

The legislature appropriated funding and adopted provisions specifically for implementation of ESSB 5921 in the 2011-2013 Operating Budget Act, 2ESHB 1087. Also, under EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.), the legislature extended the authority for agencies to adopt emergency rules to *"... implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013 ..."*

This rule meets the requirements of office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are *"required by state or federal law or required to maintain federally delegated or authorized programs;"* and *"necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities."*

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 3, 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 3, Repealed 0.

Date Adopted: October 6, 2011.

Elizabeth M. Hyde  
Director

**AMENDATORY SECTION** (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3565 Consumers' responsibilities.** When a ~~((consumer))~~ person applies for or receives SCC program subsidies, ~~((he or she))~~ the applicant or consumer must, as a condition of receiving those benefits:

(1) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities outside of the consumer's home;

(4) Pay the provider for child care services when the consumer requests additional child care for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS;

(5) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have

a written policy in place charging all families for these optional child care programs;

(6) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;

(7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(8) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; ~~((and))~~

(9) Provide the information requested by the DSHS fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her SCC program subsidies. If DSHS determines a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter~~((-))~~; and

(10) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in (a) of this subsection.

(a) For the purposes of this subsection, "good cause" also includes the following:

(i) The applicant or consumer has a current court order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;

(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance benefits requirements;

(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;

(iv) The applicant or consumer is a single-parent family when the other parent is deceased;

(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;

(vi) The applicants or consumers are both minor parents;

or  
(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases or cases outside of the United States.

(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3610 Countable income.** DSHS counts income as money a consumer earns or receives from:

- (1) Wages and commissions earned from employment;
- (2) Unemployment compensation;
- (3) A TANF or other welfare grant;
- (4) The following child support ~~((payments received))~~ payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-3565 (10)(a)(i), the amount as shown on a current court order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(5) Supplemental Security Income (SSI);

(6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

(7) Refugee assistance payments;

(8) Payments from the Veterans' Administration;

(9) Pensions or retirement income;

(10) Payments from labor and industries (L&I), or disability payments;

(11) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;

(12) Other types of income not listed in WAC 170-290-3630; and

(13) Gross wages from employment or self-employment income as defined in WAC 170-290-0003. Gross wages include any wages that are taxable.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3660 Eligibility period.** (1) A consumer who meets all of the requirements of part III of this chapter is eligible ~~((for))~~ to receive SCC subsidies for six months before having to redetermine his or her income eligibility. The six-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and 170-290-3501. Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than six months if requested by the consumer.

(3) A consumer's eligibility may end sooner than six months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

## WSR 11-21-006

### RESCISSION OF EMERGENCY RULES DEPARTMENT OF EARLY LEARNING

[Filed October 6, 2011, 10:44 a.m.]

Effective immediately upon this filing, the department of early learning (DEL) rescinds emergency rules filed on June 30, 2011, as WSR 11-14-066, revising rules in chapter 170-290 WAC, to implement section 11 of ESSB 5921, enrolled as chapter 42, Laws of 2011 1st sp. sess. The department has



filed subsequent emergency rules on this date to replace and supersede the rules filed as WSR 11-14-066.

Elizabeth M. Hyde  
Director

**WSR 11-21-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-265—Filed October 6, 2011, 1:09 p.m., effective October 8, 2011, 9:00 p.m.]

Effective Date of Rule: October 8, 2011, 9:00 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000J; and amending WAC 220-56-330.

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 rules reopen the recreational crab fishery in the specified marine areas and adjust the open days per week to allow for inclement winter weather. Available harvest shares allow the areas to be opened in this rule. 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: October 6, 2011.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-56-33000J Crab—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-330:

(1) Effective 8:00 a.m. October 8, 2011, through 5:00 p.m. December 31, 2011, a person may fish for crab for personal use seven days a week in Marine Areas 4, 5, 6, 7, 8-1,

8-2, and those waters of Marine Area 9 north of a line that extends from Olele Point to Foulweather Bluff.

(2) Effective 8:00 a.m. November 21, 2011, through 5:00 p.m. December 31, 2011, a person may fish for crab for personal use seven days a week in Marine Areas 11 and 13.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 5:01 p.m. December 31, 2011:

WAC 220-56-33000J Crab—Areas and seasons.

**WSR 11-21-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-267—Filed October 6, 2011, 3:16 p.m., effective October 6, 2011, 3:16 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Y and 232-28-62100L.

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: Permanent rules that were adopted to implement the personal use fishing plans that were agreed to with resource comanagers at the North of Falcon proceedings are now in 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 0, Amended 0, Repealed 2.

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

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

Date Adopted: October 6, 2011.

Lori Preuss  
for Philip Anderson  
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-28-61900Y	Exceptions to statewide rules. (11-160)
WAC 232-28-62100L	Puget Sound salmon—Salt-water seasons and daily limits. (11-160)

**WSR 11-21-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-268—Filed October 7, 2011, 11:24 a.m., effective October 8, 2011, 6:00 p.m.]

Effective Date of Rule: October 8, 2011, 6:00 p.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100K; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Discontinues sales of platform and hook-and-line-caught fish from mainstem tribal fisheries (above and below Bonneville Dam) effective 6:00 p.m., October 8, 2011. Continues to allow sales of fish caught in Yakama Nation tributary fisheries except for steelhead. A permit is required for sales of salmon caught in Yakama Nation tributary fisheries, as per tribal regulations. Based on in-season forecasts, impacts to upriver steelhead are near the ESA limit set for treaty fisheries. Discontinuing sales of steelhead from the tributaries will reduce risk of exceeding steelhead impacts. Any ongoing treaty fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on

May 10 and October 6, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 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: October 7, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye,

bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: Columbia River tributaries above Bonneville Dam:

a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

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

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line. Gill nets may only be used in Drano Lake.

d. Allowable Sales: Salmon, shad, yellow perch, bass, walleye, carp and catfish. A permit issued by Yakama Nation is required for sales of salmon, consistent with Yakama Nation tribal regulations. Steelhead may be retained for subsistence purposes only.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 8, 2011:

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam. (11-262)

**WSR 11-21-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-269—Filed October 7, 2011, 11:25 a.m., effective October 10, 2011, 6:00 a.m.]

Effective Date of Rule: October 10, 2011, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05700D; and amending WAC 220-32-057.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Adopts a sturgeon set line commercial treaty fishery in Zone 6 (SMCRA 1F, 1G, 1H). Allow sales only of sturgeon, (including platform and hook and line). Sturgeon remain available for harvest based on the 2011 sturgeon guidelines. Conforms state rules to tribal rules. Consistent with compact action of October 6, 2011. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969).

The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 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: October 7, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-32-05700D Columbia River sturgeon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except that those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

1. **Open period:** 6:00 a.m. October 10 through 6:00 p.m. October 31, 2011.

2. **Area:** SMCRA 1F, 1G, 1H

3. **Gear:** Setlines. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.

Traditional platform and hook and line gear is also allowed, which includes hoop nets, dip bag nets, and rod and reel with hook and line gear.

4. **Allowable Sales:** Sturgeon caught in SMCRA 1G and 1H that are between 43 and 54 inches in fork length and 38-54 inches in fork length caught in SMCRA 1F may be sold. Sturgeon within the size limits stated above, and caught in platform and hook and line fishery may be sold if caught during the open periods of the set line fishery.

5. **Sanctuaries:** Standard sanctuaries applicable to these gear types. No Spring Cr. Sanctuary.

6. **Additional Regulations:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

7. **Miscellaneous:** It is unlawful to sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter RCW 75.28, or to sell or barter sturgeon eggs at retail. It is unlawful to deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. October 31, 2011:

WAC 220-32-05700D Columbia River sturgeon seasons above Bonneville.

#### **WSR 11-21-016 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 11-266—Filed October 7, 2011, 2:10 p.m., effective October 10, 2011, 7:00 a.m.]

Effective Date of Rule: October 10, 2011, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100M and 220-47-41100W; and amending WAC 220-47-311 and 220-47-411.

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: Canada has notified the United States that the inside southern chum abundance is likely to exceed the critical abundance threshold and therefore harvestable chum are available. This regulation modifies fishing schedules for Salmon Management and Catch Reporting Areas 7 and 7A per agreement with tribal comanagers. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 7, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-47-31100M Purse seines—Open periods.** Notwithstanding the provisions of WAC 220-47-311, it is

unlawful to take, fish for, or possess salmon taken for commercial purposes with purse seine gear in waters of Puget Sound Management and Catch Reporting Areas 7 and 7A, except open from 7 A.M. to 6 P.M. on October 10 and October 13, 2011.

#### NEW SECTION

**WAC 220-47-41100W Gill nets—Open periods** Notwithstanding the provisions of WAC 220-47-411, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with gill net gear in waters of Puget Sound Management and Catch Reporting Areas 7 and 7A, except open from 7 A.M. to midnight on October 10 and October 13, 2011.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective October 14, 2011:

- WAC 220-47-31100M Purse seines—Open periods.  
WAC 220-47-41100W Gill nets—Open periods.

**WSR 11-21-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-271—Filed October 10, 2011, 4:32 p.m., effective October 10, 2011, 4:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300W; and amending WAC 220-52-073.

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 red and green sea urchins exist in the areas described. By harvest management agreement, the legal size limits for red sea urchins have changed for the 2011-2012 harvest management period. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly 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: October 10, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-07300X Sea urchins** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, 4, 6 and 7 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4 are open seven days-per-week. In Sea Urchin Districts 1, 2 and 4 it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 220-52-07300W Sea urchins. (11-253)

**WSR 11-21-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 11, 2011, 9:37 a.m., effective October 11, 2011, 9:37 a.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESHB 2082, Laws of 2011, terminates all components of the disability lifeline (DL) program effective October 31, 2011, and establishes the aged, blind, or disabled (ABD) assistance and

the pregnant women assistance (PWA) programs effective November 1, 2011.

Purpose: The department is amending, repealing, and creating new rules to eliminate reference to the DL program and to establish standards for the ABD assistance and PWA programs to comply with ESHB 2082.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-400-0025, 388-404-0010, 388-408-0010, 388-418-0025, 388-424-0016, 388-448-0001, 388-448-0010, 388-448-0020, 388-448-0030, 388-448-0035, 388-448-0040, 388-448-0050, 388-448-0060, 388-448-0070, 388-448-0080, 388-448-0090, 388-448-0100, 388-448-0110, 388-448-0120, 388-448-0130, 388-448-0140, 388-448-0150, 388-448-0160, 388-448-0180, 388-448-0200, 388-448-0210, 388-448-0220, 388-448-0250, 388-450-0110, 388-450-0135, 388-450-0175, 388-462-0011 and 388-478-0030; and amending WAC 388-273-0020, 388-406-0005, 388-406-0045, 388-406-0055, 388-408-0005, 388-416-0010, 388-424-0010, 388-424-0015, 388-436-0030, 388-442-0010, 388-450-0040, 388-450-0045, 388-450-0095, 388-450-0100, 388-450-0115, 388-450-0120, 388-450-0130, 388-450-0156, 388-450-0170, 388-460-0020, 388-460-0040, 388-468-0005, 388-470-0055, 388-473-0010, 388-474-0010, 388-474-0020, 388-476-0005, 388-478-0035, and 388-486-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335.

Other Authority: ESHB 2082, chapter 36, Laws of 2011.

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

Reasons for this Finding: ESHB 2082, Laws of 2011, eliminates DL October 31, 2011, and creates ABD and PWA November 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 28, Amended 29, Repealed 33; 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 28, Amended 29, Repealed 33; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 10, 2011.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-23 issue of the Register.

**WSR 11-21-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed October 11, 2011, 10:04 a.m., effective October 11, 2011, 10:04 a.m.]

Effective Date of Rule: Immediately.

Purpose: As directed by the 2011 legislature, effective July 1, 2011, the department of early learning (DEL) increased child care license fees as provided in section 617(2) of 2ESHB 1087, enrolled as chapter 50, Laws of 2011 1st sp. sess., (the state operating appropriations bill), to raise revenues intended to help balance the 2011-2013 budget. Base license fees were increased by twenty-five percent for all DEL-licensed child care agencies (providers). In addition, per-child fees were increased for child care centers and school-age center programs to \$12 per child - after the first twelve children in care - up to the maximum capacity stated on the center's license. The original emergency rules to implement 2ESHB 1087, section 617(2), were filed on June 16, 2011, as WSR 11-13-077. This second emergency rule continues the same provisions as the first emergency rule, while DEL takes further steps toward permanent adoption.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-070, 170-295-0060, and 170-296-0170.

Statutory Authority for Adoption: RCW 43.215.255, 43.215.070 (2)(c), section 617(2) of 2ESHB 1087 (Laws of 2011 1st sp. sess.).

Other Authority: EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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: Section 617(2) of 2ESHB 1087 states, "(2) *In accordance with RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center and family home licensure fees in fiscal years (FY) 2012 and 2013 for costs to the department for the licensure activity, including costs of necessary inspection. These increases are necessary to support expenditures authorized in this section.*"

The legislature's 2011-2013 *Operating Budget Overview -Revenue* documents indicate that DEL is required to raise nearly one million dollars in the biennium through this license fee increase. Further, senate ways and means committee projections indicated that DEL is expected to raise an approximately \$990,826 through FY 2013 (July 1, 2011, through June 30, 2013) by increasing annual license fees for:

- Family home child cares [care] to \$30 from the current \$24; and
- Child care centers and school-age center programs:
  - To \$125 (from the current \$100) for the first twelve children in care; plus

- To \$12 (from the current \$8) per child after the first twelve children, up to the center's maximum capacity stated on the center's license.

In order to achieve the legislatively directed revenue targets, DEL adopted emergency rules that were filed on June 16, 2011, effective July 1, 2011, as WSR 11-13-077. Child care license fees collected are deposited to the state general fund and are not retained by DEL.

Family home child cares [care] are not charged a per-child fee in addition to their base license - they may care for a maximum of twelve children. A child care home or center may be licensed to care for fewer children than the physical capacity of its facility. The maximum number of children to be in care (licensed capacity) is stated on the facility's DEL-issued license. Currently, individual child care centers are licensed from twelve children to more than two hundred fifty children.

This is the first fee increase for licensed family home children [child] cares [care] since 1982. Child care center and school-age center license fees were raised in 2010 - prior to that increase center license fees had remained at the same amount since 1982.

DEL has filed a preproposal statement of inquiry, filing number WSR 11-12-076, and is taking steps toward permanent adoption of these license fee increases.

RCW 34.05.350 (1)(c) was amended by EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.) to permit emergency rule making if the agency finds for good cause, "*(c) 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.*"

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; and Recently Enacted State Statutes: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: October 11, 2011.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

**WAC 170-151-070 How do I apply or reapply for a license?** (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

- (i) Expiration of your current license;
- (ii) Opening date of your center;
- (iii) Relocation of your center; or
- (iv) Change of the licensee.

(b) A completed background check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee is:

(i) ~~((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii))~~ For new licenses issued ~~((after June 30, 2010))~~ before July 1, 2011, or for licensees whose annual licensing fees are due ~~((after June 30, 2010))~~ before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or

(ii) For new licenses issued after June 30, 2011, or for licensees whose annual licensing fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars per year for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(5) The department must not issue a license to you until the state fire marshal's office has certified or inspected and approved the center.

(6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(7) You must submit a completed plan of deficiency correction, when required, to the department of health and the department licensor before the department will issue you a license.

(8) You, your director and site coordinator must attend department-provided orientation training.

**AMENDATORY SECTION** (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

**WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center?** (1) To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;  
 (b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;

(c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is:

(i) ~~((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty eight dollars for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for ((licenses)) licensees whose annual license fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii) For new licenses issued after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars for each additional child over the licensed capacity of twelve children;~~

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number((-);

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

(i) The person responsible for the active management of the center; and

(ii) The program supervisor((-);

(e) Diploma or education transcript copies of the program supervisor;

(f) Three professional references each, for yourself, the director, and the program supervisor;

(g) Articles of incorporation if you choose to be incorporated;

(h) List of staff (form is provided in the application);

(i) Written parent communication (child care handbook);

(j) Copy of transportation insurance policy (liability and medical);

(k) In-service training program (for facilities employing more than five persons);

(l) A floor plan of the facility drawn to scale;

(m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;

(n) A copy of your policies and procedures that you give to parents; and

(o) A copy of your occupancy permit.

(3) You must submit to the department a completed background check form for all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and

(4) You must submit your application and reapplication ninety or more calendar days before the date:

(a) You expect to open your new center;

(b) Your current license is scheduled to expire;

(c) You expect to relocate your center;

(d) You expect to change licensee; or

(e) You expect a change in your license category.

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

**WAC 170-296-0170 Am I required to pay a fee when applying for a family home child care license?** (1) For new licenses issued by the department before July 1, 2011, or for licensees whose annual licensing fees are due before July 1, 2011, you must pay a nonrefundable license fee of twenty-four dollars. ((This))

(2) For new licenses issued by the department after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, you must pay a nonrefundable license fee of thirty dollars.

(3) Payments must be in the form of a check or money order. You must pay the license fee each year before or on your anniversary date.

## WSR 11-21-022

### RESCISSION OF EMERGENCY RULES

#### DEPARTMENT OF

#### EARLY LEARNING

[Filed October 11, 2011, 10:13 a.m.]

Effective immediately upon this filing, the department of early learning (DEL) rescinds emergency rules filed on June 16, 2011, as WSR 11-13-077, revising rules in chapters 170-151, 170-295, and 170-296 WAC to implement section 617(2) of 2ESHB 1087, enrolled as chapter 50, Laws of 2011 1st sp. sess. The department has filed subsequent emergency rules on this date to replace and supersede the rules filed as WSR 11-13-077.

Elizabeth M. Hyde

Director



**WSR 11-21-028**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
(Residential Care Services)

[Filed October 11, 2011, 11:53 a.m., effective October 11, 2011, 11:53 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department has filed these emergency rules for chapter 388-101 WAC to comply with ESHB 1548 which was recently signed by the governor. ESHB 1548 postpones implementation of Initiative Measure 1029 (codified in chapters 18.88B and 74.39A RCW) which mandates increased training and background check requirements for long-term care workers. These rules become effective immediately upon filing. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-101-3253; and amending WAC 388-101-3000, 388-101-3050, 388-101-3220, 388-101-3245, 388-101-3250, 388-101-3255, 388-101-3258, and 388-101-3302.

Statutory Authority for Adoption: RCW 71A.12.080.

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: Emergency adoption of these rules is necessary in order to comply with ESHB 1548 which delays implementation of increased training and background check requirements for long-term care workers. These rules become effective immediately upon filing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 1.

Date Adopted: June 17, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection

program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

**"Department"** means the Washington state department of social and health services.

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than the vulnerable adult's profit or advantage.

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements (~~(of chapter 388-112 WAC)~~).

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

**"Managing client funds"** means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

**"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a

clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

**"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

**"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

**"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

**"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

**"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

**"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

**"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

**"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

**"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

**"Vulnerable adult"** includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

**"Willful"** means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3050 Application for initial certification.** (1) To apply for initial certification an applicant must submit to the department:

- (a) A letter of intent that includes:
  - (i) Contact information;
  - (ii) Geographical area of service; and
  - (iii) Type of service provided, including group home, supported living, community protection, or group training home.
- (b) A completed and signed application on forms designated by the department;
- (c) All attachments specified in the application and any other information the department may request including but not limited to:
  - (i) Administrator resumes;
  - (ii) Statements of financial stability;
  - (iii) Professional references;
  - (iv) Relevant experiences and qualifications of the individual or agency; and
  - (v) ~~((On or after January 1, 2011, a certificate of completion of the instruction and support services staff training required under chapter 388-112 WAC, if the applicant may provide instruction and support services to a client or may supervise staff who provide such services; and~~
  - (vi)) Assurances the applicant will not discriminate against any client or employee.
- (d) A copy of the license if applying for certification as a group home;
- (e) The name of the administrator of the program; and
- (f) The department background authorization form for:
  - (i) The applicant;
  - (ii) Anyone associated with the applicant; and
  - (iii) The individual or individuals designated to serve as administrator of the proposed program.
- (2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.
- (3) The department will only process a completed application.
- (4) Each person named in the application for initial certification is considered separately and jointly by the department.
- (5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.
- (6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3220 Administrator responsibilities and training.** (1) The service provider must ensure that the administrator delivers services to clients consistent with this chapter, and the department's residential services contract. This includes but is not limited to:

(a) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;

(b) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and support as required by this chapter and the department contract; and

(c) Maintaining and securely storing client, personnel, and financial records.

(2) Before assuming duties, an administrator (~~(hired on or after January 1, 2011,)~~) must complete ~~((the))~~ required instruction and support services staff training ~~((requirements under chapter 388-112 WAC))~~ if the administrator may provide instruction and support services to clients or may supervise instruction and support services staff.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3245 Background check—General.**

(1) Background checks conducted by the department and required in this chapter include but are not limited to (~~(=~~

~~(a))~~ Washington state background checks including:

~~((+))~~ (a) Department and department of health findings; and

~~((+))~~ (b) Criminal background check information from the Washington state patrol and Washington state courts(~~(=~~ and

~~(b) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055).~~

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3250 Background checks—Washington state.** (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies. ~~((The service provider must also follow background check requirements under WAC 388-101-3253.))~~

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

(4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the service provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

(5) The service provider must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request;

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(6) The service provider must renew the Washington state background check at least every thirty-six months and keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

(9) All applicants for certification must have a background check.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3255 Background checks—Provisional hire—Pending results.** ~~((+))~~ Persons identified in WAC 388-101-3250(2) ~~((who are hired on or before January 1, 2012))~~ and who have lived in Washington state less than three years, or who are otherwise required to complete a fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

~~((+))~~ (1) The person is not disqualified based on the initial results of the background check from the department; and

~~((+))~~ (2) A national fingerprint-based background check is pending.

~~((2) Persons identified in WAC 388-101-3250(2) who are hired after January 1, 2012, may be hired for a one hundred twenty-day provisional period when:~~

~~(a) The person is not disqualified based on the initial result of the background check from the department; and~~

~~(b) A national fingerprint-based background check is pending.))~~

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3258 Training requirements for staff** ~~((hired before January 1, 2011))~~. The service provider must

ensure that staff (~~hired before January 1, 2011~~) have met the training requirements under WAC 388-101-3260 through 388-101-3300.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3302 Certified community residential services and supports—General training requirements.**

(1) (~~On or after January 1, 2011,~~) The service provider must ensure the following instruction and support services staff meet the training requirements (~~under~~) of this chapter (~~(388-112 WAC, including orientation and safety training, and basic training)~~):

(a) Administrators (~~(, hired on or after the effective date,)~~) who may provide instruction and support services to clients or may supervise instruction and support services staff; and

(b) Instruction and support services staff including their supervisors (~~(, who are hired on or after the effective date)~~).

(2) (~~On or after January 1, 2011,~~) Applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and support services to clients or may supervise instruction and support services staff must meet the training requirements of this chapter (~~(388-112 WAC, including orientation and safety training, and basic training)~~).

~~((3) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101-3253	National fingerprint-based background checks—Required.
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**WSR 11-21-029  
EMERGENCY RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 11, 2011, 11:56 a.m., effective October 21, 2011]

Effective Date of Rule: October 21, 2011.

Purpose: The department is extending emergency rules (previously filed as WSR 11-14-016) for sections of chapter 388-76 WAC to comply with ESHB 1548, an act relating to implementation of long-term care worker requirements regarding background checks and training. ESHB 1548 postpones implementation of Initiative Measure 1029 (codified in chapters 18.88B and 74.39A RCW) which mandates increased training and background check requirements for long-term care workers. The law became effective immedi-

ately upon filing (June 15, 2011). The department has taken the following steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 11-13-091 on June 20, 2011. The department has shared drafts of the proposed rules with stakeholders. The department has filed a proposed rule notice (CR-102), WSR 11-18-096 on September 7, 2011, with a public hearing date of October 25, 2011. However, the department needs to file an emergency extension since the permanent rules will not be in effect in time.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10162; and amending WAC 388-76-10146, 388-76-10160, and 388-76-10174.

Statutory Authority for Adoption: RCW 70.128.040.

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: Emergency adoption of these rules is necessary in order to comply with ESHB 1548 which delays implementation of increased training and background check requirements for long-term care workers. This does not allow the department enough time to adopt rules through the regular rule adoption process.

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 3, Repealed 1.

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 1.

Date Adopted: October 6, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10146 Qualifications—Training (~~and home care aide certification~~) requirements.**

(1) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers (~~(hired on or after January 1, 2011,)~~) meet the (~~(long-term care worker)~~)

training requirements of chapter 388-112 WAC, including but not limited to:

- (a) Orientation and safety;
  - (b) Basic;
  - (c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;
  - (d) Cardiopulmonary resuscitation and first aid; and
  - (e) Continuing education.
- ~~(2) ((All persons listed in subsection (1) of this section, must obtain the home care aide certification required by chapter 246-980 WAC.~~
- ~~(3) All adult family home applicants on or after January 1, 2011, must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain the home care aide certification required by chapter 246-980 WAC.~~
- ~~(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.~~
- ~~(5))~~ The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10160 Background check—General.**

Background checks conducted by the department and required in this chapter include but are not limited to:

- (1) Washington state background checks including:
  - (a) Department and department of health findings; and
  - (b) Criminal background check information from the Washington state patrol and the Washington state courts.
- ~~(2) ((After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.~~
- ~~(3))~~ Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.
- ~~((4))~~ ~~(3)~~ In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. ~~((Results of the national fingerprint-based background check may not be shared.))~~ For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

- (a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;
  - (b) No more than twelve months has elapsed between the date the person was last employed at a licensed health care facility and the date of the person's current employment application; and
  - (c) The background check is no more than two years old.
- (2) If background check information is shared, the health care facility employing the subject of the check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in WAC 388-76-10180 since the completion date of the most recent background check.
- (3) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in WAC 388-76-10180, after the completion date of their most recent background check:
- (a) Cannot rely on the applicant's previous employer's background check information; and
  - (b) Must request a new background check as required by this chapter.
- (4) Health care facilities that share background check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.
- (5) Health care facilities must send and receive the background check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(6) In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10162	Background check— National fingerprint checks—Who is required to have.
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**WSR 11-21-030**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 11, 2011, 12:20 p.m., effective October 21, 2011]

Effective Date of Rule: October 21, 2011.

Purpose: The department is extending emergency rules (previously filed as WSR 11-14-011) for sections of chapter 388-76 WAC to comply with and be consistent with section 403 of ESHB 1277, Oversight of licensed or certified long-term care settings for vulnerable adults. Section 403 of this

new law requires that adult family home license fees be set in the State Omnibus Appropriations Act effective July 1, 2011. The department has taken these steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 11-13-091 on June 20, 2011. The department has shared drafts of the proposed rules with stakeholders. The department has filed a proposed rule notice (CR-102), WSR 11-18-096 on September 7, 2011, with a public hearing date of October 25, 2011. However, the department needs to file an emergency extension since the permanent rules will not be in effect in time.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10025, 388-76-10070, and 388-76-10073.

Statutory Authority for Adoption: RCW 70.128.040.

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

Reasons for this Finding: The legislature has passed ESHB 1277 which requires the license fee to be set in the State Omnibus Appropriations Act effective July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

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 3, 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 3, Repealed 0.

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

Date Adopted: October 6, 2011.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10025 License annual fee.** (1) The adult family home must pay an annual license fee as ~~((required in chapter 70.128 RCW))~~ established in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the home does not pay the fee when due, the department will impose sanctions.

**AMENDATORY SECTION** (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10070 Application—Fees required.** (1) The applicant must pay all processing and license fees established ~~((by chapter 70.128 RCW))~~ in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The applicant must submit the required fees with the application form.

~~(3) ((The processing fee will be returned as required by chapter 70.128 RCW.~~

~~(4))~~ The license fee will be returned to the applicant if the application is withdrawn, voided or the license is denied.

**AMENDATORY SECTION** (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10073 Application—Processing fees required.** The processing fee, required in ~~((chapter 70.128 RCW))~~ the state omnibus appropriations act and any amendment or additions made to that act, applies to any application submitted to the department, including but not limited to an application for licensure, change of ownership, or a change of location.

## WSR 11-21-031

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 11, 2011, 12:31 p.m., effective October 21, 2011]

Effective Date of Rule: October 21, 2011.

Purpose: The department is extending emergency rules (previously filed as WSR 11-14-014) for sections of chapter 388-78A WAC to comply with and be consistent with ESHB 1548, Long-term care worker requirements. The new law delays implementation of long-term care worker home care aide certification, revised training requirements, and enhanced fingerprint-based background checks to begin with those hired on or after January 1, 2014. This law took effect immediately. The department has taken these steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 11-13-094 on June 20, 2011. The department has shared drafts of the proposed rules with stakeholders. The department has filed a proposed rule notice (CR-102), WSR 11-17-134 on August 24, 2011, with a public hearing date of October 11, 2011. However, the department needs to file an emergency extension since the permanent rules will not be in effect in time.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-2463; and amending WAC 388-78A-2461, 388-78A-2467, and 388-78A-2474.

Statutory Authority for Adoption: Chapter 18.20 RCW.

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: The legislature has passed ESHB 1548 which postpones long-term care worker training and certification requirements and fingerprint background check requirements until January 1, 2014. This bill becomes effective immediately. This does not allow the department enough time to adopt rules through the regular rule adoption process.

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 3, Repealed 1.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 1.

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 1.

Date Adopted: October 6, 2011.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2461 Background check—General.** Background checks conducted by the department and required in this chapter include but are not limited to:

(1) Washington state background checks including:

(a) Department and department of health findings;

(b) Criminal background check information from the Washington state patrol and the Washington state courts;

(2) ~~((After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.~~

~~(3))~~ Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

~~((4))~~ (3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

**AMENDATORY SECTION** (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2467 Background check—Sharing by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain

circumstances. ~~((Results of the national fingerprint checks may not be shared.))~~ For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in WAC 388-78A-2470.

(2) The boarding home may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

**AMENDATORY SECTION** (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2474 Training ~~((and home care aide certification))~~ requirements.** (1) The boarding home must ensure staff persons ~~((hired before January 1, 2011))~~ meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The boarding home must ensure all boarding home administrators, or their designees, and caregivers ~~((hired on or after January 1, 2011))~~ meet the ~~((long-term care worker))~~ training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) The boarding home must ensure ~~((all persons listed in subsection (2) of this section, obtain the home care aide certification required by chapter 246-980 WAC.~~

~~((4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.~~

~~((5) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009)) that all staff receive appropri-~~



ate training and orientation for their specific duties and responsibilities.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-78A-2463	Background check—National fingerprint checks—Who is required to have.
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### WSR 11-21-032

#### EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 11, 2011, 12:32 p.m., effective October 21, 2011]

Effective Date of Rule: October 21, 2011.

Purpose: The department is extending emergency rules (previously filed as WSR 11-14-015) for sections of chapter 388-78A WAC to comply with and be consistent with section 402 of ESHB 1277, Oversight of licensed or certified long-term care settings for vulnerable adults. Section 402 of this new law requires that boarding home license fees be set in the State Omnibus Appropriations Act. It also requires that the license must be issued only to the person who applied for the license and provides details on the expiration date of a license. The law directs that the effective date of these changes is July 1, 2011. The department has taken these steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 11-13-094 on June 20, 2011. The department has shared drafts of the proposed rules with stakeholders. The department has filed a proposed rule notice (CR-102), WSR 11-17-134 on August 24, 2011, with a public hearing date of October 11, 2011. However, the department needs to file an emergency extension since the permanent rules will not be in effect in time.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2750, 388-78A-2800, and 388-78A-3230.

Statutory Authority for Adoption: Chapter 18.20 RCW.

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

Reasons for this Finding: The legislature has passed ESHB 1277 which requires the license fee to be set in the State Omnibus Appropriations Act. It also requires that the license must be issued only to the person who applied for the license and provides details on the expiration date of a license. The effective date of this change is July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

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 3, 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 3, Repealed 0.

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

Date Adopted: October 6, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2750 Application process.** To apply for a boarding home license, a person must:

(1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;

(2) Submit all relevant attachments specified in the application;

(3) Submit department background authorization forms as required in WAC 388-78A-2462 and 388-78A-2463;

(4) Sign the application;

(5) Submit the license fee as specified in WAC 388-78A-3230;

(6) Submit verification that construction plans have been approved by construction review services;

(7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(8) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

(10) A license must be issued only to the person who applied for the license.

(11) A license may not exceed twelve months in duration and expires on a date set by the department.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2800 Changes in licensed bed capacity.** To change the licensed bed capacity in a boarding home, the boarding home must:

(1) Submit a completed request for approval to the department at least one day before the intended change;

(2) Submit the prorated fee (~~required according to WAC 388-78A-3230~~); and

(3) Post an amended license obtained from the department, indicating the new bed capacity.

AMENDATORY SECTION (Amending WSR 10-21-036, filed 10/12/10, effective 10/29/10)

**WAC 388-78A-3230 Fees.** The boarding home must:

(1) Submit an annual per bed license fee (~~(of one hundred six dollars per bed of the licensed resident bed capacity as determined by and in accordance with RCW 18.20.050)) based on the licensed bed capacity and as established in the omnibus appropriation act and any amendment or addition made to that act;~~

(2) ~~((Submit an additional one hundred fifty dollars when billed by the department for:~~

~~(a) A third on-site visit required by the boarding home's failure to adequately correct problems identified in a statement of deficiencies; and~~

~~(b) A full out-of-sequence inspection resulting from information gathered during a complaint investigation.~~

~~(3)) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and~~

~~((4)) (3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule that is based on the project cost.~~

### WSR 11-21-033

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 11, 2011, 12:34 p.m., effective October 21, 2011]

Effective Date of Rule: October 21, 2011.

Purpose: The department is extending emergency rules (previously filed as WSR 11-14-012) for sections of chapter 388-97 WAC to comply with and be consistent with section 401 of ESHB 1277, Oversight of licensed or certified long-term care settings for vulnerable adults. Section 401 of this new law requires that nursing home license fees be set in the State Omnibus Appropriations Act. It also requires that the license must be issued only to the person who applied for the license and provides details on the expiration date of a license. The law directs that the effective date of these changes is July 1, 2011. The department has taken these steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 11-13-093 on June 20, 2011. The department has shared drafts of the proposed rules with stakeholders. The department has filed a proposed rule notice (CR-102), WSR 11-17-070 on August 16, 2011, with a public hearing date of October 11, 2011. However, the department needs to file an emergency extension since the permanent rules will not be in effect in time.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-4160, 388-97-4180, and 388-97-4280.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

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

Reasons for this Finding: The legislature has passed ESHB 1277 which requires the license fee to be set in the State Omnibus Appropriations Act. It also requires that the license must be issued only to the person who applied for the license and provides details on the expiration date of a license. The effective date of this change is July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

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 3, 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 3, Repealed 0.

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

Date Adopted: October 6, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-21-037, filed 10/12/10, effective 10/29/10)

**WAC 388-97-4160 Initial nursing home license.** (1) A complete nursing home license application must be:

(a) Submitted at least sixty days prior to the proposed effective date of the license on forms designated by the department;

(b) Signed by the proposed licensee or the proposed licensee's authorized representative;

(c) Notarized; and

(d) Reviewed by the department in accordance with this chapter.

(2) All information requested on the license application must be provided. At minimum, the nursing home license application will require the following information:

(a) The name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;

(b) The names of the administrator, director of nursing services, and, if applicable, the management company;

(c) The specific location and the mailing address of the facility for which a license is sought;

(d) The number of beds to be licensed; and

(e) The name and address of all nursing homes that the proposed licensee or any partner, officer, director, manage-

rial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

(3) The proposed licensee must be:

(a) The individual or entity responsible for the daily operation of the nursing home;

(b) Denied the license if any individual or entity named in the application is found by the department to be unqualified.

(4) For initial licensure of a new nursing home, the proposed licensee must submit the annual license fee with the initial license application. ~~((The nonrefundable nursing home license fee is three hundred twenty seven dollars per bed per year))~~ The per bed license fee is established in the omnibus appropriations act and any amendment or additions made to that act.

(5) If any information submitted in the initial license application changes before the license is issued, the proposed licensee must submit a revised application containing the changed information.

(6) If a license application is pending for more than six months, the proposed licensee must submit a revised application containing current information about the proposed licensee or any other individuals or entities named in the application.

(7) A license may not exceed twelve months in duration and expires on a date set by the department.

(8) A license must be issued only to the person who applied for the license.

AMENDATORY SECTION (Amending WSR 10-21-037, filed 10/12/10, effective 10/29/10)

**WAC 388-97-4180 Nursing home license renewal.** (1) All nursing home licenses must be renewed annually.

(2) License renewals must be:

(a) Submitted at least thirty days prior to the license's expiration date on forms designated by the department;

(b) Signed by the current licensee; and

(c) Reviewed by the department in accordance with this chapter.

(3) The current licensee must provide all information on the license renewal form or other information requested by the department.

(4) The application for a nursing home license renewal must be made by the individual or entity currently licensed and responsible for the daily operation of the nursing home.

(5) The nursing home license renewal fee must be submitted at the time of renewal. ~~((The nonrefundable nursing home license renewal fee is three hundred twenty seven dollars per bed per year))~~ The per bed license fee is established in the omnibus appropriations act and any amendment or additions made to that act.

(6) In unusual circumstances, the department may issue an interim nursing home license for a period not to exceed three months. The current licensee must submit the prorated nursing home license fee for the period covered by the interim license. The annual date of license renewal does not change when an interim license is issued.

(7) A change of nursing home ownership does not change the date of license renewal and fee payment.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-4280 Change of ownership.** (1) A change of ownership occurs when there is a substitution, elimination, or withdrawal of the licensee or a substitution of control of the licensee. **"Control,"** as used in this section, means the possession, directly or indirectly, of the power to direct the management, operation, and policies of the licensee, whether through ownership, voting control, by agreement, by contract or otherwise. Events which constitute a change of ownership include, but are not limited to, the following:

(a) The form of legal organization of the licensee is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The licensee transfers ownership of the nursing home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(c) Dissolution or consolidation of the entity;

(d) Merger unless the licensee survives the merger and there is not a change in control of the licensee;

(e) If, during any continuous twenty-four month period, fifty percent or more of the entity is transferred, whether by a single transaction or multiple transactions, to:

(i) A different party (e.g., new or former shareholders); or

(ii) An individual or entity that had less than a five percent ownership interest in the nursing home at the time of the first transaction; or

(f) Any other event or combination of events that the department determines results in a:

(i) Substitution, elimination, or withdrawal of the licensee; or

(ii) Substitution of control of the licensee responsible for the daily operational decisions of the nursing home.

(2) Ownership does not change when the following, without more, occur:

(a) A party contracts with the licensee to manage the nursing home enterprise in accordance with the requirements of WAC 388-97-4260; or

(b) The real property or personal property assets of the nursing home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee.

(3) When a change of ownership is contemplated, the current licensee must notify the department and all residents and their representatives at least sixty days prior to the proposed date of transfer. The notice must be in writing and contain the following information as specified in RCW 18.51-530:

(a) Name of the proposed licensee;

(b) Name of the managing entity;

(c) Names, addresses, and telephone numbers of department personnel to whom comments regarding the change may be directed;

(d) Names of all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and

(e) Names of all general partners if proposed licensee is a partnership.

(4) The proposed licensee must comply with license application requirements. The operation or ownership of a nursing home must not be transferred until the proposed licensee has been issued a license to operate the nursing home.

(5) In the event of a change of ownership, the previously established license expiration date must not change.

**WSR 11-21-035  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-270—Filed October 11, 2011, 3:36 p.m., effective October 11, 2011, 3:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sufficient surplus of coho and hatchery chinook exists to provide opportunity for an ADA-access-only recreational 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: October 11, 2011.

Philip Anderson  
Director

**NEW SECTION**

**WAC 232-28-61900A Exceptions to statewide rules—Forks Creek—Willapa River tributary and Satsop River—Bingham Creek.** Notwithstanding the provisions of WAC 232-28-619, effective October 15, 2011, through January 31, 2012, disabled fishers meeting the

requirement of WAC 220-55-065 and/or having a designated harvester card may fish in the following waters, provided such persons follow all applicable rules and regulations:

(1) Forks Creek - within the posted fishing boundaries at the Forks Creek Hatchery ADA-accessible site; the area is located from the adult fish weir upstream 500 feet. Night closure and single point barbless hooks required. Salmon minimum size 12 inches, and daily limit 6 fish, of which up to 3 may be adults. Release wild Chinook and chum.

(a) Designated harvesters may fish from the ADA-accessible site for anglers with lower extremity impairments, or who are visually impaired or blind, if room allows. However, anglers with lower extremity impairments, or who are visually impaired, have priority over others if the ADA-accessible site becomes overcrowded.

(2) Satsop River (Bingham Creek) - within the posted fishing boundaries at the Bingham Creek Hatchery ADA-accessible site; the area is located from the Bingham Creek Hatchery barrier dam downstream 400 feet, provided such persons follow all applicable rules and regulations. Night closure and single point barbless hooks required. Salmon minimum size 12 inches, and daily limit 6 fish, of which up to 3 may be adults. Release wild Chinook and chum.

(a) Designated harvesters may fish from the ADA-accessible site for anglers with lower extremity impairments, or who are visually impaired or blind, if room allows. However, anglers with lower extremity impairments, or who are visually impaired, have priority over others if the ADA-accessible site becomes overcrowded.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective February 1, 2012:

WAC 232-28-61900A	Exceptions to statewide rules—Fork Creek—Willapa River tributary and Satsop River—Bingham Creek.
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**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 11-21-036  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-272—Filed October 11, 2011, 3:37 p.m., effective October 15, 2011, 6:00 p.m.]

Effective Date of Rule: October 15, 2011, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100D and 220-52-05100E; 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 closes the nonspot shrimp pot fishery season in the remaining open areas of Puget Sound, the beam trawl fishery in Catch Area 20A, and the beam trawl fishery in Shrimp Management Area 3, to protect egg-bearing females as per the shrimp harvest management plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 11, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-05100E Puget Sound shrimp pot and beam trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound, except as provided for in this section:

(1) Shrimp 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.

(2) 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 6:00 p.m. October 15, 2011:

WAC 220-52-05100D Puget Sound shrimp beam trawl fishery—Season. (11-240)

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 31, 2011:

WAC 220-52-05100E Puget Sound shrimp beam trawl fishery—Season.

#### **WSR 11-21-037 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 11-274—Filed October 11, 2011, 3:45 p.m., effective October 13, 2011, 6:00 a.m.]

Effective Date of Rule: October 13, 2011, 6:00 a.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000G; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Continues the late fall mainstem commercial season for non-Indian fisheries. In-season run size forecasts indicate harvestable fish remain available to commercial fisheries. Impacts to ESA-listed salmonid stocks are expected to remain within the limits allocated to non-Indian fisheries. The seasons are consistent with the 2008-2017 interim management agreement. The regulation is consistent with compact action of July 28, 2011, and October 11, 2011. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others.

*United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 11, 2011.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000H Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

### **1. Mainstem Columbia River Coho fishery**

a. SEASON: 6:00 a.m. to 6:00 p.m. Thursday October 13, 2011.

b. AREA: SMCRA 1A, 1B, 1C.

c. GEAR: Drift gillnets only. 6-inch maximum mesh size; un-slackened floater gillnet. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Grays, Elokomin-B, Cowlitz, Kalama-B, Lewis-B.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

### **2. Mainstem Columbia River Chinook fishery**

a. SEASON: 7:00 p.m. October 13 to 7:00 a.m. October 14 2011.

b. AREA: SMCRA 1D, 1E.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Washougal and Sandy River.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

### **3. Blind Slough/Knappa Slough Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

### **4. Tongue Point/South Channel Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open 4 PM to 10 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

#### 5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 28, 2011. 4 PM to 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

**6. Quick Reporting:** 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. October 13, 2011:

WAC 220-33-01000G Columbia River season below Bonneville. (11-263)

**WSR 11-21-046**  
**RESCISSION OF EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 12, 2011, 11:49 a.m.]

Effective immediately upon this filing, the department of social and health services, economic services administration rescinds emergency rules filed as WSR 11-21-020 on October 11, 2011, which amended rules under Title 388 WAC in order to:

- Eliminate all components of the disability lifeline program effective October 31, 2011, and delete statutory references; and
- Establish the aged, blind, or disabled assistance; and the pregnant women assistance programs effective November 1, 2011.

This request will cancel proposed changes filed as WSR 11-21-020 on October 11, 2011.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-21-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-275—Filed October 12, 2011, 2:27 p.m., effective October 12, 2011, 2:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000F and 220-52-04600J; and amending WAC 220-52-040 and 220-52-046.

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 provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by court order. The Puget Sound commercial season is structured to meet harvest allo-

cation 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 2, Amended 0, Repealed 2.

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

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

Date Adopted: October 12, 2011.

Philip Anderson  
Director

#### NEW SECTION

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

(1) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(2) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1 (Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B) and 2 West (Marine Fish-Shellfish Management and Catch Reporting Areas 26A-West, 25B, 25D).

(3) Effective immediately until 7:00 p.m. October 15, 2011, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-East), and sub area 3-1 (Marine Fish-Shellfish Catch Reporting Areas 23A and 23B).

(4) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management sub- area 3-2 (Marine Fish-Shellfish Management and Catch Reporting Areas 25A, 25E, 23D).

(5) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

#### NEW SECTION

**WAC 220-52-04600K Puget Sound crab fishery— Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall

(47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(2) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected due north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(3) Effective 7:00 p.m. October 15, 2011, until further notice, the following areas are closed to commercial crab fishing:

(a) Crab Management Region 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-East) and sub-area 3-1 (Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B).

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04000F Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (11-256)

WAC 220-52-04600J Puget Sound crab fishery— Seasons and areas. (11-256)



**WSR 11-21-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 12, 2011, 3:54 p.m., effective November 1, 2011]

Effective Date of Rule: November 1, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESHB 2082, Laws of 2011, terminates all components of the disability lifeline (DL) program effective October 31, 2011, and establishes the aged, blind, or disabled (ABD) assistance and the pregnant women assistance (PWA) programs effective November 1, 2011.

Purpose: The department is amending, repealing, and creating new rules to eliminate reference to the DL program and to establish standards for the ABD assistance and PWA programs to comply with ESHB 2082.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-400-0025, 388-404-0010, 388-408-0010, 388-418-0025, 388-424-0016, 388-448-0001, 388-448-0010, 388-448-0020, 388-448-0030, 388-448-0035, 388-448-0040, 388-448-0050, 388-448-0060, 388-448-0070, 388-448-0080, 388-448-0090, 388-448-0100, 388-448-0110, 388-448-0120, 388-448-0130, 388-448-0140, 388-448-0150, 388-448-0160, 388-448-0180, 388-448-0200, 388-448-0210, 388-448-0220, 388-448-0250, 388-450-0110, 388-450-0135, 388-450-0175, 388-462-0011 and 388-478-0030; amending WAC 388-273-0020, 388-406-0005, 388-406-0045, 388-406-0055, 388-408-0005, 388-416-0010, 388-424-0010, 388-424-0015, 388-436-0030, 388-442-0010, 388-450-0040, 388-450-0045, 388-450-0095, 388-450-0100, 388-450-0115, 388-450-0120, 388-450-0130, 388-450-0156, 388-450-0170, 388-460-0020, 388-460-0040, 388-468-0005, 388-473-0010, 388-474-0010, 388-474-0020, 388-476-0005, 388-478-0035 and 388-486-0005; and creating WAC 388-400-0055, 388-400-0060, 388-408-0060, 388-449-0001, 388-449-0005, 388-449-0010, 388-449-0015, 388-449-0020, 388-449-0030, 388-449-0035, 388-449-0040, 388-449-0045, 388-449-0050, 388-449-0060, 388-449-0070, 388-449-0080, 388-449-0100, 388-449-0150, 388-449-0200, 388-449-0210, 388-449-0220, 388-449-0225, 388-450-0112, 388-450-0137, 388-450-0177, 388-478-0027, and 388-478-0033.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335.

Other Authority: ESHB 2082, chapter 36, Laws of 2011.

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

Reasons for this Finding: ESHB 2082, Laws of 2011, eliminates DL October 31, 2011, and creates ABD and PWA 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 27, Amended 28, Repealed 33.

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 27, Amended 29, Repealed 33; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 12, 2011.

Katherine Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-23 issue of the Register.

**WSR 11-21-051**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-276—Filed October 13, 2011, 10:35 a.m., effective October 13, 2011, 10:35 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900R.

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: Repairs of the in-stream weir and fish ladder on Cook Slough are complete. All exclusion fences have been removed, water flows have been restored, and fish have passage through the fish ladder.

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: October 13, 2011.

Joe Stohr  
for Philip Anderson  
Director

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

Date Adopted: October 13, 2011.

Lori Preuss  
for Philip Anderson  
Director

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900R Exceptions to statewide rules—Cook (Koch Slough) side channel of Stillaguamish River. (11-150)

### WSR 11-21-055 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-278—Filed October 13, 2011, 3:39 p.m., effective October 13, 2011, 3:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900E, 232-28-61900R, 232-28-62000K, 232-28-62000L, 232-28-62100M and 232-28-62100N; and amending WAC 232-28-619, 232-28-620, and 232-28-621.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed to with resource comanagers at the North of Falcon proceedings. 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 6.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

### NEW SECTION

**WAC 232-28-61900R Washington food fish and game fish—Freshwater exceptions to statewide rules.** Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect. An area is open when a daily limit is provided:

1) **Beaver Creek (Thurston County) and all tributaries west of I-5:** Open immediately through October 31. Selective gear rules, night closure, and anti-snagging rules in effect. Trout: Minimum length 14 inches.

2) **Black River (Thurston County) from Highway 12 to bridge on 128th Ave SW:** Night closure and anti-snagging rules are in effect. Single-point hooks required. Salmon: Open immediately until further notice. Daily limit 6 fish, of which only 2 may be adults. Release Chinook and chum.

3) **Chehalis River (Grays Harbor County), from Porter Bridge to high bridge on Weyerhaeuser 1000 line:** Salmon: Closed through October 15.

4) **Cloquallum Creek (Grays Harbor County) from mouth to the outlet of Stump Lake:** Open immediately until further notice. Trout: Minimum length 14 inches.

5) **Elwha River (Clallam County) from downstream side of bridge on Elwha River Rd. to two hundred feet downstream of the south spillway on Elwha (Aldwell Lake) Dam:** Closed.

6) **Green (Duwamish) River (King County) from the 277th Street Bridge to Auburn-Black Diamond Road Bridge:** Effective immediately until further notice, anti-snagging rule in effect.

7) **Hoh River (Jefferson County) from DNR Oxbow Campground Boat Launch to Morgan's Crossing boat launch site:** Open immediately until further notice. Trout: Minimum length 14 inches.

8) **Hoquiam River, including all forks (Grays Harbor County):** Salmon: Open immediately until further notice from mouth to Dekay Road Bridge (West Fork) on mainstem. Daily limit 6 fish, of which no more than 2 may be adult salmon, and of the 2 adult salmon, only 1 may be a wild coho. Release chum and Chinook. Open immediately until further notice on East Fork from mouth to mouth of Berryman Creek. Daily limit 6 fish, of which no more than 2 may be adult salmon. Release chum, Chinook, and wild coho.

9) **Johns River (Grays Harbor County) from mouth to Ballon Creek:** Salmon: Open immediately until further notice. Daily limit 2 fish, of which 1 may be wild coho. Release chum and Chinook.

10) **Mima Creek (Thurston County) and all tributaries west of I-5:** Open immediately through October 31. Selective gear rules, night closure and anti-snagging rules are in effect. Trout: Minimum length 14 inches.

11) **Naselle River (Pacific/Wahkiakum counties), from Highway 101 Bridge upstream to the Crown Main Line Bridge:** Closed waters: from temporary hatchery weir downstream to Highway 4 when weir is installed. Salmon: Open immediately until further notice. Daily limit 6 fish, of which no more than 3 may be adult salmon, and of these 3 adult fish, no more than 2 may be wild adult coho. Release chum and wild Chinook.

12) **Nemah River, North Fork (Pacific County):** From Nemah Valley Road upstream to Nemah Hatchery: Closed.

13) **Newaukum River, (Lewis County):** Salmon: Closed through October 15.

14) **Nisqually River (Pierce County), from mouth to Military Tank Crossing Bridge:** Barbless hooks required.

15) **Nooksack River (Whatcom County), from Lummi Indian Reservation boundary to forks:** Salmon: Open immediately until further notice. Daily limit 2 salmon, plus 2 additional coho.

16) **Nooksack River, North Fork (Whatcom County): From mouth to Nooksack Falls:** Salmon: Open immediately until further notice from mouth to Maple Creek only. Daily limit 2, plus 2 additional coho.

17) **Nooksack River, South Fork (Skagit/Whatcom counties): From mouth to Skookum Creek:** Salmon: Open immediately until further notice. Daily limit 2 salmon, plus 2 additional coho. Release chum.

18) **North River (Grays Harbor/Pacific counties) from Highway 105 Bridge to Fall River:** Salmon: Open immediately until further notice. Daily limit 6 fish, of which no more than 2 may be adult salmon. Release chum and wild Chinook.

19) **Canon River (Pacific County):** Selective gear rules. Unlawful to fish from a floating device equipped with an internal combustion motor.

20) **Puyallup River (Pierce County):**

a) From city of Puyallup outfall structure near junction of Freeman Road and North Levee Road to the Carbon River: Game fish season is open only when salmon fishing is open. Single-point barbless hooks, anti-snagging rules and night closure in effect immediately until further notice. Trout: Minimum length 14 inches. Salmon: Open immediately until further notice. Daily limit 6 fish, of which no more than 4 may be adult salmon, and of the adult salmon, no more than 2 may be any combination of Chinook, coho, and chum. Release wild adult Chinook.

b) From Carbon River upstream: Open immediately until further notice. Selective gear rules apply, and release all fish, except that up to 2 hatchery steelhead may be retained.

21) **Samish River (Whatcom County):**

a) From mouth to the I-5 Bridge: Single-point hooks required immediately until further notice. Salmon: Open immediately until further notice. Daily limit 2 salmon. Release wild coho. Only fish hooked inside the mouth may be retained. Anglers must retain the first 2 salmon, if lawful to do so, and stop fishing.

b) From I-5 Bridge to old Highway 99 Bridge: Closed waters until further notice.

22) **Satsop River (Grays Harbor County) from mouth to bridge at Schafer Park:** Salmon: Open immediately until further notice. Daily limit 6 fish, of which no more than

2 may be adult salmon, and of the 2 adult salmon, only 1 may be a wild coho. Release chum and Chinook.

23) **Skagit River (Skagit/Whatcom counties):**

a) From mouth to Cascade River Road: Salmon: Open immediately until further notice. Daily limit 3 salmon plus 1 additional pink. Release Chinook and chum.

b) From the Dalles Bridge at Concrete to the Cascade River Road: Open immediately until further notice: Anti-snagging rules and night closure in effect. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit; minimum length 20 inches.

24) **Skookumchuck River (Thurston County) from mouth to one hundred feet below the outlet of the Trans Alta steelhead rearing pond located at the base of the Skookumchuck Dam:** Salmon: Closed through October 15.

25) **Skykomish River (Snohomish County) from mouth to mouth of Wallace River:** Salmon: Open immediately until further notice. Daily limit 3 salmon, plus 1 additional pink. Release Chinook and chum.

26) **Smith Creek (near North River) (Pacific County):** Salmon: Open immediately until further notice from mouth to Highway 101 Bridge. Daily limit 6 fish, of which no more than 2 may be adult salmon, and of those 2 adult salmon, 1 may be wild adult coho. Release chum and wild Chinook.

27) **Snohomish River (Snohomish County), including all channels, sloughs, and interconnected waterways, but excluding all tributaries:** Salmon: Open immediately until further notice. Daily limit 3 salmon plus 1 additional pink. Release Chinook and chum.

28) **Snoqualmie River (King County) from mouth to falls:** Salmon: Open immediately until further notice. From mouth to Plum access, daily limit 3 salmon plus 1 additional pink. Release Chinook and chum. From Plum access to falls, daily limit 3 coho only.

29) **Stillaguamish River (Snohomish County) from mouth to the forks, including all sloughs:** Salmon: Open immediately until further notice. Daily limit 2 salmon, plus 2 additional pink. Release Chinook and chum.

30) **Tahuya River (Mason County) from marker approximately one mile upstream of North Shore Road Bridge upstream:** Night closure through October 31. Unlawful to fish from a floating device equipped with an internal combustion motor, and release all fish.

31) **Willapa River (Pacific County):**

a) Mouth to Highway 6 Bridge: Effective immediately until further notice, fishing from a floating device prohibited from second bridge on Camp One Road upstream approximately 0.5 miles to mouth of Mill Creek.

b) South Fork: Anti-snagging rule and night closure effective immediately until further notice from mouth to Pehl Road Bridge. Closed waters: From falls/fish ladder in Sec. 6, T13N, R8W, downstream 400 feet. Salmon: Open immediately until further notice from mouth to Pehl Road Bridge. Daily limit 6 fish, of which no more than 3 may be adult salmon. Release chum, wild Chinook and wild coho.

32) **Wishkah River (Grays Harbor County), including all forks:** Salmon: Open immediately until further notice. Daily limit 6 fish, of which no more than 2 may be

adult salmon, and of the 2 adult salmon, only 1 may be a wild coho. Release chum and Chinook.

**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 232-28-62000L Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, WAC 220-56-128, and WAC 220-56-195, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect.

1) **Catch Record Card Area 2-1:** Salmon: Open immediately until further notice. Daily limit 6 salmon, of which not more than 3 may be adult salmon. Release chum and wild Chinook.

2) **Catch Record Card Area 2-2:** Salmon: Open immediately until further notice. Daily limit 2. Release chum and Chinook.

a) **Westport Boat Basin:** Salmon: Open immediately until further notice. Daily limit 6 salmon, of which not more than 4 may be adult salmon. Release wild Chinook.

#### NEW SECTION

**WAC 232-28-62100N Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect.

1) **Catch Record Card Area 7:** Effective immediately through October 31: Release wild coho.

a) Effective immediately through October 15: Closed Waters east of a line from Gooseberry Pt. to Sandy Pt.

2) **Catch Record Card Area 8-1:** Effective immediately through October 31: Salmon: Open. Daily limit 2 salmon. Release Chinook.

3) **Catch Record Card Area 8-2:** Effective immediately through October 31: Salmon: Open. Daily limit 2 salmon. Release Chinook. However, closed to salmon fishing in waters north of a line from Camano Head to the fishing boundary marker located approximately 1.4 miles north of Hermosa Point.

4) **Catch Record Card Area 12:** Effective immediately until further notice, waters north of a line true east from Broad Spit - Closed waters.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-28-61900E Freshwater exceptions to statewide rules—2011 North of Falcon. (11-168)

WAC 232-28-62000K Coastal salmon—2011 North of Falcon. (11-238)

WAC 232-28-62100M Puget Sound salmon—2011 North of Falcon. (11-223)

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. November 11, 2011:

WAC 232-28-61900R Freshwater exceptions to statewide rules—2011 North of Falcon.

WAC 232-28-62000L Coastal salmon—2011 North of Falcon.

WAC 232-28-62100N Puget Sound salmon—2011 North of Falcon.

#### **WSR 11-21-056**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 11-277—Filed October 13, 2011, 3:42 p.m., effective October 13, 2011, 3:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed upon with resource comanagers at the 2011 North of Falcon proceedings. 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 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 13, 2011.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Salmon and steelhead - It is permissible to use barbed hooks unless otherwise restricted. Anglers may not possess in the field salmon or steelhead mutilated so that size, species, or fin clip cannot be determined until the angler has reached their automobile or principle means of land transportation.

(a) From a true north-south line through Buoy 10, upstream of the Hwy 395 Bridge at Pasco: Salmon and steelhead: Effective immediately through November 15, 2011, daily limit 6 fish, and up to 2 may be adult salmon or hatchery steelhead or 1 of each. Release all salmon other than Chinook and hatchery coho. Release wild coho from Bonneville Dam to Hood River Bridge. Minimum size: 12 inches.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900H Exceptions to statewide rules—Columbia River. (11-173)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 16, 2011:

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

**WSR 11-21-057**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-279—Filed October 13, 2011, 4:46 p.m., effective October 13, 2011, 4:46 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed upon with resource comanagers at the 2011 North of Falcon proceedings. 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 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: October 13, 2011.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900Y Washington food fish and game fish—Freshwater exceptions to statewide rules.** Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Cowlitz River (Cowlitz/Lewis Co.):**

a) **From the mouth to Mayfield Dam:** Effective immediately until further notice, daily limit is 6 salmon, of which no more than 2 adult Chinook may be retained. Only hatchery Chinook and hatchery coho may be retained.

b) **From Mill Creek to the Hatchery Barrier Dam:** Effective immediately until further notice, anti-snagging rule and night closure are in effect. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

c) **From the posted PUD sign on Peters Road to the mouth of Ohanapcosh River and the mouth of Muddy Fork:** Anti-snagging rules and night closure are in effect immediately through October 31, 2011, for all species. When anti-snagging rule is in effect, only fish hooked in the mouth may be retained.

2. **Delemeter Creek (Cowlitz Co.):** Effective immediately until further notice, closed waters from 400' below to

200' above the temporary weirs when temporary weirs are installed.

3. **Elochoman River (Wahkiakum Co.):** Effective immediately until further notice, closed waters from 200' above the Dept. of Fish and Wildlife temporary weir downstream to Foster (Risk) Road Bridge while weir is installed in the river.

4. **Grays River (Wahkiakum Co.):**

a) From the mouth to the South Fork: Effective immediately, closed waters from 400' below to 200' above the temporary weir while the weir is installed in the river.

b) From the mouth to Highway 4 Bridge: Open immediately until further notice, anti-snagging rule, night closure and stationary gear restriction are in effect. Salmon: Open immediately until further notice. Daily limit 6 salmon, of which no more than 2 may be adult Chinook. Release chum, wild coho, and unmarked Chinook.

5. **Grays River, West Fork (Wahkiakum Co.), downstream from hatchery intake/footbridge:**

a) Closed waters from posted markers approximately 300 yards below the hatchery road bridge downstream to the mouth, October 16 until further notice.

b) Open immediately until further notice. Release all fish, except up to 2 hatchery steelhead may be retained per day. Anti-snagging rule, night closure and stationary gear restriction are in effect. Salmon: Open immediately until further notice. Daily limit 6 salmon, of which no more than 2 may be adult Chinook. Release chum, wild coho, and unmarked Chinook.

6. **Kalama River (Cowlitz Co.) from boundary markers at mouth to Railroad Bridge below I-5:** Effective immediately through October 31, night closure, anti-snagging, and stationary gear rules are rescinded.

7. **Lewis River (Clark Co.) from mouth to forks:** Effective immediately until further notice, daily limit 6 salmon, of which no more than 2 may be adult Chinook. Release all salmon except Chinook and hatchery coho.

8. **Lewis River, North Fork (Clark/Cowlitz counties) from mouth to Colvin Creek:**

a) Effective immediately until further notice, anglers may fish from any floating device from Johnson Creek to Colvin Creek.

b) Effective immediately until further notice, daily limit 6 salmon, of which no more than 2 adult Chinook may be retained. Release all salmon except Chinook and hatchery coho.

9. **Olequa Creek (Cowlitz Co.):** Effective immediately until further notice, closed waters from 400' below to 200' above temporary weirs when temporary weirs are installed.

10. **Salmon Creek (Lewis Co.):** Effective immediately until further notice, closed waters from 400' below to 200' above temporary weirs when temporary weirs are installed.

11. **Tilton River (Lewis Co.) from the mouth to the West Fork:** Night closure and anti-snagging rules in effect immediately through October 31, 2011. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

12. **White Salmon River (Klickitat/Skamania Co.) from mouth to Hwy. 14 Bridge:** Effective immediately until further notice, the daily limit follows the most liberal

regulations of the adjacent mainstem Columbia or White Salmon Rivers when both areas are open concurrently for salmon.

13. **Wind River (Skamania Co.) from mouth to Hwy. 14 Bridge:** Effective immediately until further notice, the daily limit follows the most liberal regulations of the adjacent mainstem Columbia or Wind Rivers when both areas are open concurrently for salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 11, 2011:

WAC 232-28-61900Y      Exceptions to statewide rules.

**WSR 11-21-061  
EMERGENCY RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 14, 2011, 9:32 a.m., effective October 14, 2011, 9:32 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-460-0035 to assign a protective payee to a person receiving public assistance if the recipient illegally used a public assistance electronic benefit transfer (EBT) card or cash obtained with an EBT card two or more times. Illegal use includes infractions, felonies, or violations referenced in WAC 388-412-0046 or WAC 388-446-0020. A second emergency rule is required to comply with ESSB 5921, section 14, while the department continues the permanent rule-making process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-460-0035.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.580.

Other Authority: ESSB 5921, chapter 42, Laws of 2011.

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

Reasons for this Finding: ESSB 5921, chapter 42, Laws of 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 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 Mak-

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

Date Adopted: October 13, 2011.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 02-14-083, filed 6/28/02, effective 7/1/02)

**WAC 388-460-0035 When is a protective payee assigned for mismanagement of funds?** (1) The decision to assign a person to a protective payee because of mismanagement of funds must be based on law or with proof the client is unable to manage their cash benefits. The proof must be current and show how this threatens the well being of a child or client on ~~((TANF/SFA, GA or WCCC))~~ public assistance. Examples of proof are:

(a) Department employees or others observe that the client or client's children are hungry, ill, or not adequately clothed;

(b) Repeated requests from the client for extra money for basic essentials such as food, utilities, clothing, and housing;

(c) A series of evictions or utility shut off notices within the last twelve months;

(d) Medical or psychological evaluations showing an inability to handle money;

(e) Persons having had ~~((an ADATSA))~~ a chemical dependency assessment and who are participating in ~~((ADATSA funded))~~ chemical dependency treatment;

(f) ~~((Not paying an in-home child care provider for services when payment has been issued to the client by the department for that purpose;~~

~~((g)))~~ A complaint from businesses showing a pattern of failure to pay bills or rent;

~~((h)))~~ (g) ((Using public assistance electronic benefits transfer (EBT) card or cash obtained through EBT to purchase or pay for lottery tickets, pari-mutuel wagering, or any of the activities authorized under chapter 9.46 RCW)) Notice from the office of fraud and accountability that a client illegally used a public assistance electronic benefits transfer (EBT) card or cash obtained with an EBT card two or more times. Illegal use includes infractions, felonies, or violations referenced in WAC 388-412-0046 or WAC 388-446-0020.

(2) A lack of money or a temporary shortage of money because of an emergency does not constitute mismanagement.

(3) When a client has a history of mismanaging money, benefits can be paid through a protective payee or directly to a vendor.

#### WSR 11-21-062

#### EMERGENCY RULES

#### DEPARTMENT OF REVENUE

[Filed October 14, 2011, 10:05 a.m., effective October 14, 2011, 10:05 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 308-300-160 Total fee payable—Handling of fees, establishes the amount of application and

renewal handling fees charged by the master license service (often referred to as the "business license service").

SB [SHB] 2017, chapter 298, Laws of 2011, transferred responsibility for master licensing service rules from the department of licensing to the department of revenue, effective July 1, 2011. This legislation requires that the application and renewal handling fees be established by rule.

This is the second adoption of an emergency WAC 308-300-160. The fee amounts are the same as reflected in the first emergency rule, filed on June 15, 2011. The department is in the rule-making process to adopt a permanent rule, which will be recodified in chapter 458-20 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 308-300-160 Total fee payable—Handling of fees.

Statutory Authority for Adoption: RCW 19.02.020 and 19.02.075, as amended by chapter 298, Laws of 2011.

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

Reasons for this Finding: An emergency adoption of this rule is necessary because an amended permanent rule cannot be adopted at this time.

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

Date Adopted: October 14, 2011.

Alan R. Lynn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-13-039, filed 6/8/10, effective 7/9/10)

**WAC 308-300-160 Total fee payable—Handling of fees.** (1) The fee payable will be the total amount of all individual license fees, late filing fees, other penalty fees, and handling fees, and may include additional fees charged to cover credit or debit card processing.

(2) The department will distribute the fees received for individual licenses issued or renewed to the appropriate agencies on an established schedule.

(3) The master license will not be issued until the full amount of the total fee payable is collected. When the fee

payment received is less than the total fee payable, the department will bill the applicant for the balance.

(4) The master license service application and renewal handling fees collected under RCW 19.02.075 are not refundable. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(5) The master license service handling fee amounts are:

<u>Type of handling fee:</u>	<u>Fee amount:</u>
Master business application filing	\$15.00
License renewal application filing	\$9.00

**WSR 11-21-063  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-280—Filed October 14, 2011, 10:07 a.m., effective October 14, 2011, 10:07 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend hunting rules by changing the season dates for the any-weapon Chelan, Okanogan, Okanogan-Ferry, Stevens-Pend Oreille, Klickitat hunt, described in WAC 232-28-272, from the period of October 29 - November 30, to October 15 - December 31.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-27200A; and amending WAC 232-28-272.

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 legislation expired for the pilot cougar hunt with dogs in these counties. There was not sufficient time to promulgate changes to the rules before the desired October 15 opening date. Therefore, an emergency is required.

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

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

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

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

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

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

Date Adopted: October 14, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-27200A 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations.** Notwithstanding the provisions of WAC 232-28-272, effective immediately, the "Any weapon" season in the Chelan, Okanogan, Okanogan-Ferry, Stevens-Pend Oreille, Klickitat hunt is October 15-December 31.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2011, at 11:59 p.m.

WAC 232-28-27200A 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations.

**WSR 11-21-073  
RESCISSION OF EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed October 18, 2011, 8:19 a.m.]

Please rescind emergency rules filed as WSR 11-21-030 on October 11, 2011.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-21-074  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 18, 2011, 8:20 a.m., effective October 21, 2011]

Effective Date of Rule: October 21, 2011.

Purpose: The department is extending emergency rules (previously filed as WSR 11-14-011) for sections of chapter 388-76 WAC to comply with and be consistent with section 403 of ESHB 1277, Oversight of licensed or certified long-term care settings for vulnerable adults. Section 403 of this new law requires that adult family home license fees be set in the State Omnibus Appropriations Act effective July 1, 2011. The department has taken these steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 11-13-091 on June 20, 2011. The department has shared drafts of the proposed rules with stakeholders. The department has filed a proposed rule notice (CR-102), WSR 11-18-096 on September 7, 2011,



with a public hearing date of October 25, 2011. However, the department needs to file an emergency extension since the permanent rules will not be in effect in time. This emergency rule replaces emergency rules filed as WSR 11-21-030 on October 11, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10025, 388-76-10070, and 388-76-10073.

Statutory Authority for Adoption: RCW 70.128.040.

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

Reasons for this Finding: The legislature has passed ESHB 1277 which requires the license fee to be set in the State Omnibus Appropriations Act effective July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

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 3, 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 3, Repealed 0.

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

Date Adopted: October 17, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10025 License annual fee.** (1) The adult family home must pay an annual license fee as ~~((required in chapter 70.128 RCW))~~ established in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the home does not pay the fee when due, the department will impose sanctions.

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10070 Application—Fees required.** (1) The applicant must pay all processing and license fees established ~~((by chapter 70.128 RCW))~~ in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The applicant must submit the required fees with the application form.

~~((3) The processing fee will be returned as required by chapter 70.128 RCW.~~

~~((4) The license fee will be returned to the applicant if the application is withdrawn, voided or the license is denied.))~~

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10073 Application—Processing fees required.** The processing fee, required in ~~((chapter 70.128 RCW))~~ the state omnibus appropriations act and any amendment or additions made to that act, applies to any application submitted to the department, including but not limited to an application for licensure, change of ownership, or a change of location.

**WSR 11-21-092  
EMERGENCY RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 18, 2011, 1:06 p.m., effective October 18, 2011, 1:06 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is extending emergency rules (previously filed as WSR 11-14-013) for sections of chapter 388-101 WAC to comply with ESHB 1548, an act relating to implementation of long-term care worker requirements regarding background checks and training. ESHB 1548 postpones implementation of Initiative Measure 1029 (codified in chapters 18.88B and 74.39A RCW) which mandates increased training and background check requirements for long-term care workers. The law became effective immediately upon filing (June 15, 2011). The department has taken the following steps to adopt the emergency rules as permanent rules: The department filed an initial public notice (CR-101), WSR 11-13-092 on June 20, 2011. The department shared drafts of the proposed rules with stakeholders. The department filed proposed rules with the office of the code reviser on September 28, 2011, with an expected public hearing date of November 8, 2011. The department needs to file an emergency extension to keep the emergency rules in effect until they can be adopted as permanent rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-101-3253; and amending WAC 388-101-3000, 388-101-3050, 388-101-3220, 388-101-3245, 388-101-3250, 388-101-3255, 388-101-3258, and 388-101-3302.

Statutory Authority for Adoption: RCW 71A.12.080.

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: The department filed emergency rule-making order (CR-103E) WSR 11-14-013 on June 23, 2011. Extending these emergency rules is necessary to comply with ESHB 1548 which delays implementation of increased training and background check requirements for long-term care workers. The law became effective June 15, 2011, which did not allow the department enough time to adopt rules through the regular rule adoption process. This emergency filing replaces emergency filed as WSR 11-21-028 on October 11, 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 8, Repealed 1.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 1.

Date Adopted: October 18, 2011.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a

program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

**"Department"** means the Washington state department of social and health services.

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than the vulnerable adult's profit or advantage.

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements ((of chapter 388-112 WAC)).

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

**"Managing client funds"** means that the service provider:

(1) Has signing authority for the client;

(2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

**"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

**"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

**"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

**"Qualified professional"** means a person with at least three years' experience working with individuals with devel-

opmental disabilities and as required by RCW 71A.12.220 (12).

**"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

**"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

**"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

**"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

**"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

**"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

**"Vulnerable adult"** includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility; or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider.

**"Willful"** means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

**AMENDATORY SECTION** (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3050 Application for initial certification.** (1) To apply for initial certification an applicant must submit to the department:

- (a) A letter of intent that includes:
  - (i) Contact information;
  - (ii) Geographical area of service; and
  - (iii) Type of service provided, including group home, supported living, community protection, or group training home.
- (b) A completed and signed application on forms designated by the department;

(c) All attachments specified in the application and any other information the department may request including but not limited to:

- (i) Administrator resumes;
- (ii) Statements of financial stability;
- (iii) Professional references;
- (iv) Relevant experiences and qualifications of the individual or agency; and
- (v) ~~((On or after January 1, 2011, a certificate of completion of the instruction and support services staff training required under chapter 388-112 WAC, if the applicant may provide instruction and support services to a client or may supervise staff who provide such services; and~~
  - (vi)) Assurances the applicant will not discriminate against any client or employee.

(d) A copy of the license if applying for certification as a group home;

- (e) The name of the administrator of the program; and
- (f) The department background authorization form for:
  - (i) The applicant;
  - (ii) Anyone associated with the applicant; and
  - (iii) The individual or individuals designated to serve as administrator of the proposed program.

(2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.

(3) The department will only process a completed application.

(4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

**AMENDATORY SECTION** (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3220 Administrator responsibilities and training.** (1) The service provider must ensure that the administrator delivers services to clients consistent with this chapter, and the department's residential services contract. This includes but is not limited to:

- (a) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;
- (b) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and support as required by this chapter and the department contract; and
- (c) Maintaining and securely storing client, personnel, and financial records.

(2) Before assuming duties, an administrator (~~(hired on or after January 1, 2011,))~~ must complete ~~((the))~~ required instruction and support services staff training ~~((requirements under chapter 388-112 WAC))~~ if the administrator may provide instruction and support services to clients or may supervise instruction and support services staff.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3245 Background check—General.**

(1) Background checks conducted by the department and required in this chapter include but are not limited to (~~(a)~~)

Washington state background checks including:

~~((i))~~ (a) Department and department of health findings;

and

~~((ii))~~ (b) Criminal background check information from the Washington state patrol and Washington state courts ~~(c)~~ and

~~(b) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055).~~

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3250 Background checks—Washington state.** (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies. ~~((The service provider must also follow background check requirements under WAC 388-101-3253.))~~

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

(4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the service provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

(5) The service provider must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request;

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(6) The service provider must renew the Washington state background check at least every thirty-six months and keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

(9) All applicants for certification must have a background check.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3255 Background checks—Provisional hire—Pending results.** ~~((i))~~ Persons identified in WAC 388-101-3250(2) ~~((who are hired on or before January 1, 2012))~~ and who have lived in Washington state less than three years, or who are otherwise required to complete a fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

~~((a))~~ (1) The person is not disqualified based on the initial results of the background check from the department; and

~~((b))~~ (2) A national fingerprint-based background check is pending.

~~((2) Persons identified in WAC 388-101-3250(2) who are hired after January 1, 2012, may be hired for a one hundred twenty-day provisional period when:~~

~~(a) The person is not disqualified based on the initial result of the background check from the department; and~~

~~(b) A national fingerprint-based background check is pending.))~~

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3258 Training requirements for staff** ~~((hired before January 1, 2011))~~. The service provider must ensure that staff ~~((hired before January 1, 2011))~~ have met the training requirements under WAC 388-101-3260 through 388-101-3300.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3302 Certified community residential services and supports—General training requirements.**

(1) ~~((On or after January 1, 2011,))~~ The service provider must ensure the following instruction and support services staff meet the training requirements ~~((under))~~ of this chapter ~~((388-112 WAC, including orientation and safety training, and basic training))~~:

(a) Administrators ~~((, hired on or after the effective date,))~~ who may provide instruction and support services to clients or may supervise instruction and support services staff; and

(b) Instruction and support services staff including their supervisors ~~((, who are hired on or after the effective date))~~.

(2) ~~((On or after January 1, 2011,))~~ Applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and sup-

port services to clients or may supervise instruction and support services staff must meet the training requirements of this chapter ((388-112 WAC, including orientation and safety training, and basic training)).

((3) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.))

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101-3253	National fingerprint-based background checks—Required.
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**WSR 11-21-093  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-281—Filed October 18, 2011, 2:28 p.m., effective October 18, 2011, 7:00 p.m.]

Effective Date of Rule: October 18, 2011, 7:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000H; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Continues the late fall mainstem commercial season for non-Indian fisheries. In-season run size forecasts indicate harvestable fish remain available to commercial fisheries. Impacts to ESA-listed salmonid stocks are expected to remain within the limits allocated to

non-Indian fisheries. The seasons are consistent with the 2008-2017 interim management agreement. The regulation is consistent with compact action of July 28, 2011, and October 17, 2011. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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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: October 18, 2011.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-33-01000I Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

**1. Mainstem Columbia River Coho fishery**

a. SEASON: 6:00 AM to 8:00 PM October 19, 2011.

b. AREA: SMCRA 1A, 1B, 1C.

c. GEAR: Drift gillnets only. 6-inch maximum mesh size; un-slackened floater gillnet. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Grays, Elokomin-B, Cowlitz, Kalama-B, Lewis-B.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

**2. Mainstem Columbia River Chinook fishery**

a. SEASON: 7:00 PM October 18 to 7:00 AM October 19, 2011.

7:00 PM October 19 to 7:00 AM October 20, 2011.

b. AREA: SMCRA 1D, 1E.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Lewis-B, Washougal and Sandy River.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

**3. Blind Slough/Knappa Slough Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten

revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

**4. Tongue Point/South Channel Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open 4 PM to 10 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

**5. Deep River Select Area.**

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 28, 2011. 4 PM to 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If

the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

**d. ALLOWABLE SALES:** Salmon.

**6. Quick Reporting:** 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 PM October 18, 2011:

WAC 220-33-01000H      Columbia River season  
below Bonneville. (11-263)