

WSR 12-02-044
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 30, 2011, 10:24 a.m., effective December 30, 2011, 10:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-106-0010 Definitions and 388-106-0210 Medicaid personal care (MPC) eligibility, to include the age guidelines.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0210 and 388-106-0010.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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 revised its assessment process to allocate for personal care services for children on a more individualized basis. The changes to WAC 388-106-0010 and 388-106-0210 are necessary to comport with previously adopted emergency amendments to WAC 388-106-0130 under WSR 11-23-082 filed on November 16, 2011. The emergency rule is necessary in order to comply with the state law following the supreme court decision in *Samantha A. v. DSHS*.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: December 28, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-043, filed 10/27/11, effective 11/27/11)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation;

or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" means the client is functioning within typical developmental milestones. Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of ~~(informal support)~~ assistance available for a task if ~~((the need))~~ status is coded partially met or shared benefit due to availability of other support. The department determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;
- (c) Over one-half of the time to three-fourths of the time;

or

- (d) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medi-

ation container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

"Child" means an individual less than eighteen years of age.

"Chronic care management" means programs that provide care management and coordination activities for medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.

"Health action plan" means an individual plan which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require

reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

"Department" means the state department of social and health services, aging and disability services administration or its designee.

"Designee" means area agency on aging.

"Developmental milestones" means a set of functional skills that most children achieve during a certain age range.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Disability" is described under WAC 388-511-1105.

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older. Examples of informal supports include but are not limited to: family members, friends, neighbors, school, childcare, after school activities, adult day health, church or community programs.

"Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions under WAC 388-500-0005.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out

food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to

purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 388-500-0005.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"Shared benefit" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

"SSI-related" is defined under WAC 388-475-0050.

"Status" means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; ((☞))

(d) Shared benefit, which means:

(i) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

(e) Age appropriate, which means the client is functioning within typical developmental milestones. Other options under status may be chosen if a child is not within typical developmental milestones; or

(f) Client declines, which means you do not want assistance with the task.

"**Supplemental Security Income (SSI)**" means the federal program as described under WAC 388-500-0005.

"**Support provided**" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"**You/your**" means the client.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0210 Am I eligible for MPC-funded services? You are eligible for MPC-funded services when the department assesses your ((needs)) functional ability and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC 388-500-0005. Categorically needy medical institutional programs described in chapter 388-513 WAC do not meet this criteria.

(2) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need for assistance with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self Performance_ Status or Treatment Need is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup

	Self Performance_ Status or Treatment Need is:	Support Provided is:
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: ■ Application of ointment or lotions; ■ Toenails trimmed; ■ Dry bandage changes; (■ = if you are over eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/Needs Need: coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

; or

(b) You have an unmet or partially met need for assistance or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance_ Status or Treatment Need is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	((Limited Assistance)) <u>Physical Help/part of bathing</u>	One person physical assist
Dressing	Extensive Assistance	One person physical assist

	<u>Self Performance, Status or Treatment Need is:</u>	Support Provided is:
Transfer	Extensive Assis- tance	One person physical assist
Bed Mobility and Turning and repo- sitioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Out- side Immediate Living Environ- ment	Extensive Assis- tance	One person physical assist
Medication Man- agement	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assis- tance	One person physical assist
Body care which includes: <input type="checkbox"/> Application of ointment or lotions; <input type="checkbox"/> Toenails trimmed; <input type="checkbox"/> Dry bandage changes; (<input type="checkbox"/> = if you are <u>eighteen years of age or older</u>) or Passive range of motion treatment (if you are <u>four years of age or older</u>).	<u>Needs or Received/Needs</u> <u>Need: coded as "Yes"</u>	N/A
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

WSR 12-03-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-01—Filed January 5, 2012, 1:27 p.m., effective January 16, 2012]

Effective Date of Rule: January 16, 2012.
 Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-49-02000S; and amending WAC 220-49-020.

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: For conservation of the herring resource through minimizing the fishery targeting spawning adults, all documented herring spawning grounds in Puget Sound are closed by permanent rule to fishing by all gear types other than dip bag net during the herring spawning season. This emergency rule closes the more recently documented spawning grounds to herring fishing that are not covered in the permanent rules. 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: January 5, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-49-02000S Herring and anchovy—Seasons—Lawful gear—Purposes. Notwithstanding the provisions of WAC 220-49-020, effective immediately until further notice, it is unlawful to take, fish for or possess for commercial purposes herring or anchovy from the following areas of Puget Sound, except as provided for in this section:

(1) The following areas are closed from January 16 through April 15, 2012, except to dip bag net gear:

(a) All waters of Catch Area 24C south of a line from North Bluff on Whidbey Island to East Point on Whidbey Island.

(b) All waters of Catch Area 28A west of a line projected true north-south through Treble Point on Anderson Island, including Henderson Inlet, and all waters east of the Fox Island Bridge and west of a line from Point Fosdick to Fox Point.

(c) All waters of Area 28B west of a line projected true north from Penrose Point, including Mayo Cove and Von Geldern Cove, and all waters east of a line projected true north from Allen Point in Henderson Bay.

Date Adopted: January 5, 2012.

Joe Stohr
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective April 16, 2012:

WAC 220-49-02000S Herring and anchovy—Seasons—Lawful gear—Purposes.

WSR 12-03-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-316—Filed January 5, 2012, 4:04 p.m., effective January 16, 2012]

Effective Date of Rule: January 16, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011-2012 forecast of wild steelhead returning to the Puyallup River basin is well below the spawning goal. This closure will reduce the incidental hooking mortalities of wild steelhead. Puget Sound wild steelhead populations are listed as "threatened" under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—White, Carbon and Puyallup rivers. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective January 16, 2012, until further notice, it is unlawful to fish in those waters of the White River from the mouth to the R Street Bridge in Auburn.

(2) Effective January 16, 2012, until further notice, it is unlawful to fish in those waters of the Carbon River from the mouth to the Highway 162 Bridge.

(3) Effective January 16, 2012, until further notice, it is unlawful to fish in those waters of the Puyallup River from the mouth of Carbon River, upstream.

WSR 12-03-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-317—Filed January 5, 2012, 4:05 p.m., effective February 1, 2012]

Effective Date of Rule: February 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011-2012 forecast of wild steelhead returning to the Snohomish River system is well below the spawning goal. These closures will reduce the incidental hooking mortalities of wild steelhead. Puget Sound wild steelhead populations are listed as "threatened" under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 5, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Snohomish River system. Notwithstanding the provisions of WAC 232-28-619:

- **Snohomish River:** from the mouth (Burlington Northern railroad bridge) upstream to confluence of the Skykomish and Snoqualmie rivers: Closed to all fishing, effective February 1, 2012.
- **Skykomish River:** From the mouth to the Highway 2 bridge at the Big Eddy Access: Closed to all fishing, effective February 1, 2012.
- **Skykomish River:** From the Highway 2 bridge at the Big Eddy Access to confluence of North and South forks: Closed to all fishing effective, February 16, 2012.
- **North Fork Skykomish River:** From the mouth to 1000 feet downstream of Bear Creeks Falls: Closed to all fishing, effective February 1, 2012.
- **South Fork Skykomish River:** From the mouth to 600 feet downstream of Sunset Falls fishway: Closed to all fishing, effective February 1, 2012.
- **Pilchuck River:** From the mouth to 500 feet downstream of the Snohomish city diversion dam: Closed to all fishing, effective February 1, 2012.
- **Sultan River:** From the mouth to 400 feet downstream of diversion dam (river mile 9.7): Closed to all fishing, effective February 1, 2012.
- **Wallace River:** From the mouth (farthest downstream railroad bridge) to 200 feet upstream of the water intake of the salmon hatchery: Closed to all fishing, effective February 16, 2012.
- **Wallace River:** From 200 feet upstream of the water intake of the salmon hatchery to Wallace Falls: Closed to all fishing, effective February 1, 2012.
- **Snoqualmie River:** From the mouth to the boat ramp at Plumb access: Closed to all fishing, effective February 1, 2012.
- **Snoqualmie River:** From the boat ramp at Plumb access to Snoqualmie Falls: Closed to all fishing, effective February 16, 2012.
- **Tolt River:** From the mouth to the USGS trolley cable near the confluence of the North and South Forks: Closed to all fishing, effective February 1, 2012.
- **Raging River:** From the mouth to the Highway 18 Bridge: Closed to all fishing, effective February 1, 2012.
- **Tokul Creek:** From the mouth to the posted cable boundary marker: Closed to all fishing, effective February 16, 2012.

WSR 12-03-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-318—Filed January 5, 2012, 4:06 p.m., effective February 1, 2012]

Effective Date of Rule: February 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011-2012 forecast of wild steelhead returning to the Skagit River system is well below the spawning goal. These closures will reduce the incidental hooking mortalities of wild steelhead. Puget Sound wild steelhead populations are listed as "threatened" under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 5, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Skagit River system. Notwithstanding the provisions of WAC 232-28-619:

(1) **Skagit River mainstem:** From the mouth to the Hwy. 530 Bridge at Rockport: Closed to all fishing, effective February 1, 2012.

(2) **Skagit River:** From the Hwy. 530 Bridge at Rockport to the mouth of the Cascade River: Closed to all fishing, effective February 16, 2012.

(3) **Skagit River:** From the mouth of the Cascade River to the Gorge powerhouse at Newhalem: Closed to all fishing, effective February 1, 2012.

(4) **Sauk River:** From the mouth to the Whitechuck River: Closed to all fishing, effective February 1, 2012.

(5) **Cascade River:** From the mouth to the Rockport-Cascade Road Bridge: Closed to all fishing, effective February 16, 2012.

(6) **Cascade River:** From the Rockport-Cascade Road Bridge upstream to the headwaters: Closed to all fishing, effective February 1, 2012.

WSR 12-03-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-319—Filed January 5, 2012, 4:08 p.m., effective February 1, 2012]

Effective Date of Rule: February 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There is an unknown number of wild steelhead returning to these streams for the 2011-2012 season. Wild steelhead escapements to these waters over the past several years have shown a declining trend. These closures will reduce the incidental hooking mortalities of wild steelhead. Puget Sound wild steelhead populations are listed as "threatened" under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 5, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules.

Notwithstanding the provisions of WAC 232-28-619, effective February 1, 2012, until further notice, it is unlawful to fish in the following waters:

(1) **Dungeness River:** From the mouth upstream to the forks at Dungeness Forks Campground.

(2) **Morse Creek:** from the mouth to Port Angeles Dam.

(3) **Salt Creek:** From the mouth to the bridge on Highway 112.

(4) **Deep Creek:** From the mouth upstream.

(5) **Pysht River:** From the mouth upstream.

(6) **Clallam River:** From the mouth upstream.

(7) **Sekiu River:** From the mouth to the forks.

WSR 12-03-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-320—Filed January 5, 2012, 4:09 p.m., effective February 1, 2012]

Effective Date of Rule: February 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011-2012 forecast of wild steelhead returning to the Stillaguamish River system is well below the spawning goal. These closures will reduce the incidental hooking mortalities of wild steelhead. Puget Sound wild steelhead populations are listed as "threatened" under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 5, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Stillaguamish River system. Notwithstanding the provisions of WAC 232-28-619:

(1) **Stillaguamish River:** From Marine Drive upstream to the forks: Closed to all fishing, effective February 1, 2012.

(2) **North Fork Stillaguamish River:** From the mouth to the mouth of French Creek: Closed to all fishing, effective February 1, 2012.

(3) **North Fork Stillaguamish River:** From the mouth of French Creek to the Swede Heaven Bridge: Closed to all fishing, effective February 16, 2012.

(4) **South Fork Stillaguamish River:** From the mouth to 400 feet below the Granite Falls fishway outlet: Closed to all fishing, effective February 1, 2012.

(5) **Pilchuck Creek:** From the mouth to the Highway 9 bridge: Closed to all fishing, effective February 1, 2012.

(6) **Canyon Creek:** From the mouth upstream: Closed to all fishing, effective February 1, 2012.

**WSR 12-03-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-321—Filed January 5, 2012, 4:10 p.m., effective February 1, 2012]

Effective Date of Rule: February 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Nooksack River wild steelhead run is depressed and will not meet the spawning goal for the 2011/2012 return year. These closures will reduce the incidental hooking mortalities of wild steelhead. Puget Sound wild steelhead populations are listed as "threatened" under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 5, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

(1) **Nooksack River mainstem:** From the Lummi Indian reservation boundary to the confluence of the North and South forks: Closed to all fishing, effective February 1, 2012.

(2) **North Fork Nooksack River:** From the mouth to Maple Creek: Closed to all fishing, effective February 16, 2012.

(3) **North Fork Nooksack River:** From Maple Creek to Nooksack Falls: Closed to all fishing, effective February 1, 2012.

(4) **Middle Fork Nooksack River:** From the mouth to City of Bellingham diversion dam: Closed to all fishing, effective February 1, 2012.

(5) **South Fork Nooksack River:** From the mouth to Skookum Creek: Closed to all fishing, effective February 1, 2012.

**WSR 12-03-027
RESCISSION OF EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)**

[Filed January 6, 2012, 9:05 a.m.]

Effective January 7, 2012, the department of social and health services, aging and disability services administration, rescinds the following emergency rules:

- WSR 11-21-029 filed on October 11, 2011, regarding chapter 388-76 WAC.
- WSR 11-21-031 filed on October 11, 2011, regarding chapter 388-78A WAC.
- WSR 11-21-032 filed on October 11, 2011, regarding chapter 388-78A WAC.

Katherine Vasquez
Rules Coordinator

WSR 12-03-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-04—Filed January 6, 2012, 2:12 p.m., effective January 6, 2012, 2:12 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Z; 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: Additional protection is needed to minimize impacts to Endangered Species Act listed steelhead. This change makes Washington department of fish and wildlife fishing rules mirror the Yakama Nation regulation. 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: January 6, 2012.

Lori Preuss
 for Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through February 29, 2012, the whitefish fishery in waters of the Yakima River from the Hwy. 223 Bridge at Granger (river mile 82.7) to the Interstate 82 Bridge at Union Gap (river mile 107.1) is closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 1, 2012:

WAC 232-28-61900Z Exceptions to statewide rules—Yakima River.

WSR 12-03-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-03—Filed January 6, 2012, 2:52 p.m., effective January 7, 2012]

Effective Date of Rule: January 7, 2012.

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: This section of Tokul Creek is closed in the permanent regulations until January 15 to allow for winter steelhead broodstock collection at the Tokul Creek Hatchery. The Tokul Creek Hatchery facility has met its winter steelhead broodstock goals and remaining steelhead in Tokul Creek are available for harvest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: January 6, 2012.

Lori Preuss
 for Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Tokul Creek. Notwithstanding the provisions of WAC 232-28-619, effective January 7 through February 15, 2012, it is permissible to fish in waters of Tokul Creek from the Fish Hatchery Road Bridge to the posted cable boundary

marker downstream of the hatchery intake. Unless otherwise provided, all other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 16, 2012:

WAC 232-28-61900Y Exceptions to statewide rules—Tokul Creek.

WSR 12-03-049
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Financial Services Administration)

[Filed January 11, 2012, 9:02 a.m., effective January 11, 2012, 9:02 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending sections of chapter 388-06 WAC to implement Initiative 1163 passed by the voters on November 8, 2011. Initiative 1163 changes the effective date for long-term care fingerprint requirements from January 1, 2014, to January 1, 2012, and delays fingerprint requirements for community residential service providers until January 1, 2016.

This filing replaces and supersedes CR-103E filed as WSR 12-02-045 on December 30, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0020, 388-06-0110, 388-06-0150, 388-06-0525, and 388-06-0540.

Statutory Authority for Adoption: RCW 43.43.832, chapter 74.39A RCW.

Other Authority: Washington Initiative 1163.

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: This filing replaces and supersedes CR-103E filed as WSR 12-02-045 on December 30, 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 5, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 9, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter? The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

"Authorized" or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" and **"youth"** are used interchangeably in this chapter and refer to individuals who are under parental or department care including:

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect; or

(4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Community residential service providers" include all division of developmental disabilities supported living providers with the exception of supported living providers who are also licensed as a boarding home or adult family

home provider. Community residential service providers also include DDD companion homes, DDD alternative living and licensed residential homes for children.

"**DCFS**" means division of children and family services and is a division within children's administration that provides child welfare, child protective services, and support services to children in need of protection and their families.

"**DDD**" means the division of developmental disabilities, department of social and health services (DSHS).

"**DLR**" means the division of licensed resources that is a division within children's administration, the department of social and health services.

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

"**I**" and "**you**" refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"**JRA**" means the juvenile rehabilitation administration, department of social and health services.

"**Licensor**" means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

"**Individual provider**" as defined in RCW 74.39A.240 means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and supports to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

"**Individuals with a developmental disability**" means individuals who meet eligibility requirements in Title 71A RCW. A developmental disability is any of the following: Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and constitutes a substantial limitation to the individual.

"**Spousal abuse**" includes any crime of domestic violence as defined in RCW 10.99.020 when committed against a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

"**Unsupervised**" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the child or developmentally disabled individual or vulnerable adult to whom the applicant has access during the course of his or her employ-

ment or involvement with the business or organization (RCW 43.43.080(9)).

"**Unsupervised access**" means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time.

"**We**" refers to the department, including licensors and social workers.

"**WSP**" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0110 Who must have background checks? (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Per ~~((RCW 74.39A.055, the department requires state and federal background checks on all long-term care workers for the elderly or persons with disabilities hired or))~~ chapter 74.39A RCW long-term care workers, including individual providers, contracted after January 1, 2012 must be screened through a Washington state name and date of birth background check and a national fingerprint-based background check.

(a) This does not include long-term care workers qualified and contracted or hired on or before December 31, 2011. Background check renewals for individuals qualified and contracted or hired on or before December 31, 2011 will be conducted as follows:

(i) An individual who has continuously resided in Washington State for the past three years will be screened through a state name and date of birth check provided they do not experience a break in service or contract.

(ii) An individual who has resided in the state for less than three consecutive years shall be screened through a national fingerprint-based background check in addition to the state name and date of birth check.

(b) DDD community residential service providers will be screened as described in subsection (2)(a)(i) and (ii) of this section. Community residential service providers are not subject to the long-term care fingerprint requirement until January 2016.

(c) Parents are not exempt from the long-term care background check requirements.

(3) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0150 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Except as required in WAC 388-06-0150 (4)(b) and (5), children's administration and division of developmental disabilities will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three years.

(3) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(5) The division of developmental disabilities requires fingerprint-based background checks for ~~((a))~~:

(a) Long-term care workers as defined in ~~((RCW 74-39A.009(16)))~~ chapter 74.39A RCW hired or contracted on or after January 1, 2012 except community residential service providers. Community residential service providers are not subject to the long-term care fingerprint requirement until January 2016. These background checks must include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

(b) Providers who are subject to a background check who have resided in Washington State for less than three consecutive years.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire? (1) Individuals are eligible for the one hundred twenty-day provisional hire immediately, except as provided under subsection (2) of this section and WAC 388-06-0540. The signed background check application and fingerprinting process must be completed as required by the applicable DSHS program.

(2) Long-term care workers as defined in chapter 74.39A RCW are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as provisional hiring is allowed by the applicable DSHS program rules and the long-term care worker is not disqualified as a result of the initial name and date of birth background check.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an agency, entity, or hiring individual requesting:

- (1) An initial license;
- (2) An initial contract; ~~((e))~~
- (3) Approval as a family child day care home provider, foster parent or adoptive parent (see 42 U.S.C. Sec 671 (a)(20)); or

(4) Any other individual listed in the boarding home or adult family home license application, such as an adult family home entity representative or resident manager, or a boarding home administrator.

**WSR 12-03-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-05—Filed January 11, 2012, 3:55 p.m., effective January 12, 2012]

Effective Date of Rule: January 12, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900M.

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 Kendall Creek Hatchery and Whatcom Creek Hatchery winter steelhead programs are expected to meet broodstock needs from returning hatchery winter steelhead. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 11, 2012.

Joe Stohr
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900M Exceptions to statewide rules—North Fork Nooksack River and Whatcom Creek. (11-307)

WSR 12-03-063

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 12, 2012, 10:23 a.m., effective January 12, 2012, 10:23 a.m.]

Effective Date of Rule: Immediately.

Purpose: To extend the current emergency rule filed as WSR 11-19-060, before it expires on January 14, 2012. The current emergency rule will stay in effect as written. The plan to adopt the permanent rule is being accomplished through additional changes being made to chapter 388-845 WAC within WSR 11-23-155. The public hearing for WSR 11-23-155 is January 10. However, the earliest the changes can be adopted is February 13, 2012.

The proposed amendments to WAC 388-845-0600 and 388-845-0610 are needed to revise the current working age adult policy to allow clients to choose between employment and community access services as directed by the legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0600 and 388-845-0610.

Statutory Authority for Adoption: RCW 34.05.350 (1)(c).

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: HB [2ESHB] 1087, section 205 (g)(i), directed the department to revise the current working age adult policy to allow clients to choose between employment and community access activities. Clients age twenty-one and older who are receiving services through a home and community based waiver shall be offered the choice to transition to a community access program after nine months of enrollment in a [an] employment program and the option to transition from a community access program to an employment program at any time. In response to this direction we need to request emergency rule to update WAC 388-845-0600 and 388-845-0610.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 10, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0600 What are community access services? Community access services are provided in the community to enhance or maintain your community integration, physical or mental skills.

(1) ~~((If you are age sixty-two or older, these))~~ Services ~~((are available to))~~ assist you to participate in activities, events and organizations in the community in ways similar to others of ~~((retirement))~~ similar age.

(2) These services are available in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0610 Are there limits to community access services I can receive? The following limits apply to your receipt of community access services:

(1) You must be age sixty-two or older or you have accessed nine consecutive months of employment services.

(2) You cannot be authorized to receive community access services if you receive prevocational services or supported employment services.

(3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

WSR 12-03-064

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 12, 2012, 10:25 a.m., effective January 13, 2012]

Effective Date of Rule: January 13, 2012.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health changes as required under 2ESHB 1087 (2011-2013 operating budget).

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0815.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 2ESHB 1087.

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

Reasons for this Finding: The department added adult day health (ADH) services and eligibility into the community options program entry system (COPEs) waiver effective September 1, 2011, as a result of the legislation action under 2ESHB 1087. The department was directed to eliminate the ADH service under the state plan 1915(i) option and to reestablish it under the COPEs waiver under WAC 388-106-0300 and 388-106-0305. This filing replaces and supersedes the CR-103E filed as WSR 11-19-061 on September 15, 2011. As part of the governor's proposed 2012 supplemental budget the ADH program is being eliminated, so the department filed a CR-101 as WSR 12-01-119 on December 21, 2011. Proceeding with permanent adoption of this rule making is pending the outcome of the final budget decided on by the legislature during the regular 2012 legislative session.

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

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

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

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

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

Date Adopted: January 9, 2012.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0815 Am I eligible for adult day health? ~~((1) You are eligible for adult day health services if you meet all of the following criteria. You are:~~

- ~~(a) Age eighteen years or older;~~
- ~~(b) Enrolled in one of the following medical assistance programs:

 - ~~(i) Categorically needy (CNP);~~
 - ~~(ii) Categorically needy qualified medicare beneficiaries (CNP-QMB);~~
 - ~~(iii) General assistance—Expedited medicaid disability (GA-X); or~~
 - ~~(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA);~~
 - ~~(e) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714; and~~
 - ~~(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering; and~~
 - ~~(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and~~
 - ~~(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.~~
 - ~~(d) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.~~~~
- ~~(2) You are not eligible for adult day health if you:

 - ~~(a) Can independently perform or obtain the services provided at an adult day health center;~~
 - ~~(b) Have referred care needs that:

 - ~~(i) Exceed the scope of authorized services that the adult day health center is able to provide;~~
 - ~~(ii) Do not need to be provided or supervised by a licensed nurse or therapist;~~
 - ~~(iii) Can be met in a less structured care setting; or~~
 - ~~(iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.~~~~
 - ~~(c) Live in a nursing home or other institutional facility; or~~
 - ~~(d) Are not capable of participating safely in a group care setting))~~ You are eligible for adult day health if you meet the conditions described in WAC 388-106-0300 or 388-106-0305.~~

WSR 12-03-072
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed January 13, 2012, 8:55 a.m., effective January 13, 2012, 8:55 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending sections in the department of early learning (DEL) child care licensing WAC chapters to establish a process as required by SB 5625 for child care licensees to obtain and maintain a nonexpiring child care license. This filing includes sections of WAC:

- Chapter 170-151 WAC, School-age child care center minimum licensing requirements;
- Chapter 170-295 WAC, Minimum licensing requirements for child care centers; and
- Chapter 170-296 WAC, Child care business regulations for family home child care. (Note: Sections of chapter 170-296 WAC included in this filing are permanently repealed on March 31, 2012, when new chapter 170-296A WAC is effective. See WSR 11-23-068 filed on November 14, 2011. When effective, applicable new sections of chapter 170-296A WAC adopted in WSR 11-23-068 regarding nonexpiring licenses will replace and supersede sections of chapter 170-296 WAC in this filing.)

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

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

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

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

Reasons for this Finding: When SB 5625 took effect on July 22, 2011, certain DEL licensing rules regarding child care license applications, transition from "initial" to "full" licenses, license renewals, and enforcement became obsolete and may conflict with the law. Failure of child care licensees to follow new requirements to obtain or retain a nonexpiring child care license may result in a prompt expiration of the license as provided in SB 5625.

Emergency rules are needed so that licensed child care business owners may understand the new annual licensing conditions and requirements for a nonexpiring license under SB 5625, and so prevent unnecessary license expirations that could impact the safety, health and welfare of the children in care or welfare of the child care licensee's business. The rules are also expected to result in cost savings to the state by reducing most of the current administrative paperwork for DEL child care licensing staff surrounding the triannual license renewal process for each of the approximately 7,250

licensed child care facilities statewide. Achieving such efficiencies is consistent with the Governor's Executive Order 06-02 to develop innovative regulatory best practices, and to promote effective ongoing regulatory improvement.

Establishment of a nonexpiring full license is generally supported by regulated child care licensees, most of which are small businesses. The process provided in SB 5625 and these rules is expected to significantly reduce the volume and complexity of license renewal paperwork that licensees previously needed to complete every three years.

Proceeding with these rules is consistent with state office of financial management guidance regarding Executive Order 10-06 (extended by Executive Order 11-03) suspending noncritical rule making, but allowing rules to proceed that are, "required by federal or state law or required to maintain federally delegated or authorized programs," or "beneficial to or requested or supported by the regulated entities, local governments or small businesses that (the rule) effects."

DEL filed a proposed rule-making notice on January 4, 2012 (WSR 12-02-078) and public hearings are scheduled for February 2012. Visit the DEL web site at <http://www.del.wa.gov/laws/development/> for more information and how to comment on the proposed 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 2, Amended 19, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 19, Repealed 1.

Date Adopted: January 13, 2012.

Elizabeth M. Hyde
Director

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 170-151-085 (~~(How do I get an)~~) **Initial (license?) licenses.** (1) The department may issue an initial license (~~(to you if you are)~~) if an applicant is not currently licensed to provide child care, when (you) the applicant:

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

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

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

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

(2) The department may issue an initial license (~~(to you)~~) for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department must evaluate (~~(you)~~) an applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a nonexpiring full license under WAC 170-151-087.

(4) The department may issue a nonexpiring full license to (you if you) a licensee operating under an initial license who:

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

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

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-151-087.

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

NEW SECTION

WAC 170-151-087 Nonexpiring licenses. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

(a) An annual nonrefundable licensing fee;

(b) A declaration to the department on a department-approved form indicating:

(i) The intent to continue operating a licensed child care program; or

(ii) The intent to cease operation on a date certain;

(c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

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

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

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

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

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

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

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

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

(c) Extent of deviation from the requirements(~~;~~);

(d) Evidence of a good faith effort to comply(~~;~~); and

(e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing law does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, the department may issue a probationary license in addition to civil penalties or other sanctions. Such situations may include:

(a) Substantiation that a child (or children) was abused or neglected while in the care of the center(~~;~~);

(b) Disapproved fire safety or sanitation report(~~;~~);

(c) Use of unauthorized space for child care(~~;~~);

(d) Inadequate supervision of children(~~;~~);

(e) Understaffing for the number of children in care(~~;~~);

or

(f) Noncompliance with requirements addressing:

(i) Children's health(~~;~~);

(ii) Proper nutrition(~~;~~);

(iii) Discipline(~~;~~);

(iv) Emergency medical plan(~~;~~); or

(v) Sanitation and personal hygiene practices.

(3) (~~You must~~) The licensee must notify parents of all children in care or who may apply for care when the department issues a probationary license (~~to you~~). The licensee must:

(a) (~~You must~~) Notify the parents or guardians of all children in care of the program's probationary status within five working days of receiving the department's notification that the department has issued a probationary license;

(b) (~~You must~~) Notify parents and guardians in writing, and the department must approve the notice before (~~you~~) the licensee sends the notification; and

(c) (~~You must~~) Provide documentation to the department that (~~you have~~) he or she has notified parents or guardians of all children in care within ten working days after (~~you~~) the licensee receives notification that the department has issued a probationary license. Documentation must consist of a copy of the letter (~~you have~~) the licensee has sent to the parents(~~;~~) or guardians.

(~~4~~) (4) The department may issue a probationary license for up to six months, and at the department's discretion, the department may extend the probationary license for an additional six months.

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

WAC 170-151-992 **Fee payment** (~~and refunds~~). (~~+~~) ~~Fees are due with applications for initial license or renewal. The department will not proceed on applications until required fees are paid.~~

~~Except as otherwise provided in these rules, fees shall be paid for a minimum of one year.~~

~~(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.~~

~~(3) When the department issues a license for more than one year:~~

~~(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application was submitted, or~~

~~(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.~~

~~(4) Except as otherwise provided in these rules, if an application is withdrawn prior to issuance or denial, one half of the fee shall be refunded.~~

~~(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.~~

~~(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.~~

~~(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.~~

~~(8) To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.~~

~~(9) Fee payments shall be by mail. Payment shall be by check, draft, or money order.)~~ (1) The department does not process an application or continuation until the applicant or licensee, as applicable, has paid the required fee.

(2) Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) Multiple years.

(3) Applicants and licensees must pay their fees by mailing a check or money order for the required amount to the department.

(4) If there is a change in a facility that places the facility in a different fee category, the department prorates the additional fee amount over the remainder of the license period.

(5) If an applicant or licensee withdraws an application before the department denies or issues a license, the fee shall not be refunded.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Anti-bias" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"Capacity ((that you are licensed for))" means the maximum number of children that ((you are)) a licensee is authorized to have on the premises of the child care at any one time.

"Center" means the same as **"child care center."**

"Certification" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see **"Tribal certification"**).

"Child abuse or neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"Child-accessible" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"Child care center" means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"Clean" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface).

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

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

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"**License**" means a permit issued by the department authorizing ~~((you))~~ a licensee by law to operate a child care center and certifying that ~~((you))~~ the licensee meets the minimum requirements under licensure.

"**Licensee**" or "**you**" means the person, organization, or legal entity responsible for operating the center.

"**Maximum potential capacity based on square footage**" is the maximum number of children ~~((you))~~ a licensee can be licensed for based on the amount of useable space (square footage) in ~~((your))~~ the licensee's center. ~~((You))~~ The licensee may be licensed for less than the maximum potential capacity. ~~((You))~~ A licensee may not be licensed for more than the maximum potential capacity.

"**Moisture impervious**" or "**moisture resistant**" means a surface incapable of being penetrated by water or liquids.

"**Nonexpiring license**" or "**nonexpiring full license**" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"**Parent**" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"**Pesticides**" means chemicals that are used to kill weeds, pests, particularly insects.

"**Potentially hazardous food**" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"**Potable water**" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"**Premises**" means the building where the center is located and the adjoining grounds over which ~~((you have))~~ the licensee has control.

"**Preschool age child**" means a child thirty months through five years of age not attending kindergarten or elementary school.

"**Program supervisor**" means the person responsible for planning and supervising the center's learning and activity program.

"**Sanitize**" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"**Satellite kitchen**" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"**School-age child**" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"**Staff**" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"**Supervised access**" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or

the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

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

"**Toddler**" means a child twelve months through twenty-nine months of age.

"**Terminal room cleaning**" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.

"**Tribal certification**" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"**Unsupervised access**" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

"**Useable space**" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

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

WAC 170-295-0090 ~~((When does the department issue))~~ **Initial and nonexpiring full licenses** ~~((, and when are))~~ ~~—~~ **Licensing fees** ~~((due?))~~ ~~;~~ ~~((We))~~ The department may issue an initial license to centers that have not yet begun providing care, but are accepting applications for potential clients.

(1) ~~((We))~~ The department may issue an initial license when ~~((you))~~ an applicant can show that ~~((you are))~~ he or she is following the rules regarding the child's health and safety.

(2) ~~((We))~~ The department may issue an initial license if ~~((you have))~~ an applicant has not yet opened for business, and so ~~((are))~~ is not yet able to show that ~~((you are))~~ he or she is complying with the rules pertaining to:

(a) Staff to child interactions;

(b) Group size and staff to child ratios;

(c) Behavior management and discipline;

(d) Activity programs;

(e) Child records and information; and

(f) Other rules that require us to observe ~~((you))~~ the facility's ability to comply with rules.

(3) ~~((You))~~ Applicants must provide ~~((us))~~ the department with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. ~~((We))~~ The department must approve of that plan.

(4) ~~((We))~~ The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(5) When ~~((you have))~~ a licensee has an initial license ~~((we:~~

~~(a) Evaluate your))~~ the department evaluates the licensee's ability to comply with all rules contained in this chapter prior to issuing a nonexpiring full license~~(;~~

~~(b) May issue a full license to you when you have demonstrated compliance with chapter 170-295 WAC; and~~

~~(c) Do not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in chapter 170-295))~~ under WAC 170-295-0095.

~~(6) ((You must pay licensing fees at the time you apply for an initial license and when your license is being renewed.~~

~~(7) We do))~~ The department may issue a nonexpiring full license to a licensee operating under an initial license who:

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

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

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-295-0095.

(7) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

(8) Fees are due with applications for initial licenses or continuations of a nonexpiring full license.

(9) The department does not process ~~((you))~~ an application or continuation until ~~((you have))~~ the applicant or licensee, as applicable, has paid the required fee.

~~((8) You))~~ (10) Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) ~~((The entire length of your license.))~~ Multiple years.

~~((9) You pay your fee))~~ (11) Applicants and licensees pay their fees by mailing a check or money order for the required amount to the department~~((, according to instructions on the licensing application.~~

~~(10) If you pay your fee one time per year, you pay the annual rate each time. The annual fee is due thirty days before each annual anniversary date of the license.~~

~~(11) If you pay for more than one year, the total fee you pay is based on the annual fee rate. For example, if you are licensed for three years and want to pay the licensing fee for the entire period at once, you multiply the annual fee by three years, and pay that amount at the time of your license application or renewal).~~

~~(12) If there is a change in ~~((your))~~ a facility that places ~~((your))~~ the facility in a ~~((higher))~~ different fee category, ~~((we))~~ the department prorates the additional fee amount over the remainder of the license period.~~

~~(13) If ~~((you))~~ an applicant or licensee withdraws ~~((your))~~ an application before ~~((we deny))~~ the department denies or issues a license, ~~((we refund one half of))~~ the fee shall not be refunded.~~

~~((14) If there is a change that requires a new license, we refund any fee that remains after your next licensing date. A new license requires a new application and fee.~~

~~(15) If we deny, revoke, or suspend your license, we do not refund your licensing fee.~~

~~(16) If you reapply for a license after we revoke or suspend your license, you must pay a new license fee.~~

~~(17) If you do not pay licensing fees when they are due, we suspend or deny your license.))~~

NEW SECTION

WAC 170-295-0095 Nonexpiring full license. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

(a) An annual nonrefundable licensing fee;

(b) A declaration to the department on a department-approved form indicating:

(i) The intent to continue operating a licensed child care program; or

(ii) The intent to cease operation on a date certain;

(c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

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

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

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

WAC 170-295-0110 ~~((When can I be fined for not following the minimum licensing requirements?))~~ Civil fines. (1) ~~((We notify you))~~ The department notifies licensees in writing of ~~((our))~~ the department's intention to impose a civil fine. ~~((We))~~ The department may use personal service, ~~((including by our))~~ the department's licenser, or certified mail. The letter will include:

(a) A description of the violation and a quote of the law or rule that ~~((you have))~~ the licensee has failed to meet;

(b) A statement of what ~~((you))~~ the licensee must do to come into compliance;

(c) The date by which ~~((we))~~ the department requires compliance;

(d) Information about the maximum allowable penalty ~~((we))~~ the department can impose if ~~((you do))~~ the licensee does not come into compliance by the given date;

(e) How ~~((you))~~ the licensee can get technical assistance services provided by ~~((us))~~ the department or by others; and

(f) Information about how ~~((you))~~ the licensee can request an extension to the date ~~((you must))~~ to be in compliance, if ~~((we))~~ the department decides ~~((you have))~~ he or she has a good reason.

(2) The length of time ~~((we establish))~~ the department establishes for ~~((you))~~ the licensee to come into compliance depends on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in ~~((your))~~ the licensee's care; or

(c) If ~~((you have))~~ the licensee has had previous opportunities to correct the deficiency and ~~((have))~~ has not done so.

(3) ~~((We))~~ The department uses the following criteria to determine if ~~((we))~~ the department imposes a civil fine based on, but not limited to, these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation for the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same law or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) ~~((We can))~~ The department may impose a civil fine in addition to or at the same time as other disciplinary actions against a child care center. These include probation, suspension, or other action.

(5) ~~((You))~~ A licensee must pay any civil fines no more than twenty-eight days after ~~((you receive))~~ receiving the notice that ~~((you have))~~ he or she has a fine. ~~((We))~~ The department may specify a later date.

(6) ~~((We can))~~ The department may waive the fine if ~~((your))~~ the licensee's center comes into compliance during the notification period.

(7) ~~((You))~~ A licensee must post the final notice of a civil fine in a noticeable place in ~~((your))~~ his or her center. The notice must remain posted until ~~((we notify you))~~ the department notifies the licensee that ~~((we have))~~ the department has received ~~((your))~~ the payment.

(8) Each violation of a law or rule is a separate violation. ~~((We can))~~ The department may penalize each violation. ~~((We can))~~ The department may impose a penalty for each day the violation continues or as a flat amount of the maximum allowable penalty.

(9) If ~~((you))~~ a licensee fails to pay ~~((your))~~ a fine within ten days after the assessment becomes final, ~~((we can))~~ the department may suspend, revoke, or not ~~((renew your))~~ con-
tinue his or her license.

(10) ~~((You))~~ Licensees have the right to a hearing when ~~((we assess))~~ the department assesses a civil fine under RCW 43.215.307 and chapter 170-03 WAC.

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

WAC 170-295-0140 ~~((When can the department issue a))~~ **Probationary licenses** ~~((to a child care center operator?))~~. (1) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee in accordance with the process provided in RCW 43.215.290, based on the following factors:

(a) ~~((You))~~ The licensee's willful or negligent failure to comply with the regulations;

(b) ~~((You))~~ The licensee's history of noncompliance with the regulations;

(c) How far ~~((you))~~ the licensee deviates from the regulations;

(d) Evidence of ~~((your))~~ the licensee's good faith effort to comply with the regulations; and

(e) Any other factors relevant to ~~((your))~~ the licensee's unique situation.

(2) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee when the willful or negligent violation of the licensing requirements does not present an immediate threat to the health and well being of the children, but would be likely to do so if allowed to continue. ~~((We can))~~ The department may also issue civil fines or other sanctions in this case. Such situations can include:

(a) Substantiation that a child was abused or neglected while in the care of the center;

(b) A fire safety inspection or health/sanitation inspection report that has been disapproved;

(c) Use of unauthorized space for child care;

(d) Inadequate supervision of children;

(e) Under staffing for the number of children in care; and

(f) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation and personal hygiene practices.

(3) ~~((You))~~ Licensees are required to notify parents when a probationary license is issued. ~~((You))~~ The licensee must:

(a) Notify in writing the parents or guardians of all children in care that the center is in probationary status. This notification must be within five working days of ~~((your))~~ receiving notification of being placed on probationary status or being issued a probationary license. ~~((We))~~ The department must approve the notification before ~~((you))~~ the licensee sends it; and

(b) Provide documentation to ~~((us))~~ the department that parents or guardians of all children in care have been notified. ~~((You))~~ The licensee must provide this documentation within ten working days of being notified that ~~((you have))~~ he or she has been issued a probationary license.

(4) A probationary license ~~((can))~~ may be issued for up to six months and ~~((can))~~ may be extended at ~~((our))~~ the department's discretion for an additional six months.

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

WAC 170-295-7040 ~~((Am I required to keep licensing information available on-site for parents to review?))~~ **Facility records.** ~~((You))~~ The licensee must keep a file on-site containing ~~((the following licensing information:~~

~~(1) Copies of the most recent child care center checklists for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

~~(2)) copies of the most recent child care center((s)) monitoring checklist and facility licensing compliance agreement for any deficiencies noted.~~

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

WAC 170-295-7080 ((What am I required to post in the center?)) Materials that must be posted. ((You)) Licensees must post the following items so that they are clearly visible to the parent and staff:

- (1) The center's child care license issued under this chapter;
- (2) A schedule of regular duty hours with the names of staff;
- (3) A typical activity schedule, including operating hours and scheduled mealtimes;
- (4) Meal and snack menus for the month;
- (5) Fire safety record and evacuation plans and procedures, including a diagram of exiting routes;
- (6) Emergency telephone numbers near the telephone;
- (7) Nondiscrimination poster;
- (8) For the staff, ((you)) the licensee must post:
 - (a) Dietary restrictions and nutrition requirements for particular children;
 - (b) Handwashing practices;
 - (c) Diaper changing procedures, if applicable;
 - (d) Disaster preparedness plan; and
 - (e) Center policies and procedures.
- (9) ((You)) The licensee must post a notification advising parents that ((you are)) the licensee is required to keep ((the following licensing information available)) a file on-site for their review(:

~~(a) Copies of the most recent child care center checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

~~(b)) containing copies of the most recent child care center((s)) monitoring checklist and facility licensing compliance agreement for any deficiencies noted.~~

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-296-0020 ((What)) Definitions ((do I need to know to understand this chapter?)) For the purpose of this chapter:

"Accessible to children" means areas of the facility and materials that children can easily get to on their own.

"Age appropriate" means the developing stages of growth typical of children within a given age group.

"American Indian child" means any unmarried person under the age of eighteen who is:

- (1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood;

(3) Considered to be Indian by a federally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Antibias" is an approach that recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, sexual orientation, gender, class, religion, creed, disability, or age.

"Assistant" means a person fourteen years or older (whether a volunteer or an employee) who assists a licensed home provider in the operation of the family home child care and is not solely responsible for the supervision of children.

"Capacity" means the highest number of children ((you)) a licensee can care for at any time, as written on ((your)) his or her license.

"Child" means a person who has not yet reached the age of twelve years.

"Child care" means the developmentally appropriate care, protection and supervision of children that is designed to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

"Child abuse and neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child by any person indicating that the child's health, welfare, and safety is harmed.

"Communicable disease" means an illness that can be spread from one person to another, in the child care setting, by either direct or indirect contact.

"Conditions of the license" means what ((you)) a licensee must do to keep a license.

"Confidentiality" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Corporal punishment" means the infliction of pain by any means for the purpose of punishment, correction, discipline, instruction or any other reason.

"Cultural relevancy" means an environment in which the learning experiences, play materials and activities are meaningful, inclusive and respectful for the participating children, their families and the community at large.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL), and its predecessor agency the department of social and health services (DSHS).

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

"Developmentally appropriate" means activities and interactions that recognize and address how children learn and what they can do at each stage of development - Socially, emotionally, cognitively, and physically.

"Discipline" means a process of guiding children to develop internal, positive social behaviors through methods that include consistent use of the following: Modeling appropriate behavior, positive reinforcement, active listening, limit setting, redirecting and modifying the environment.

"Facility licensing compliance agreement" means a written notice of rule violations and the intention to initiate enforcement, including a corrective action plan.

"Family home" means a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Family home child care" means a facility licensed to provide direct care, supervision and early learning opportunities for twelve or fewer children, in the home of the licensee where the licensee resides and is the primary provider.

"Family home child care provider" means a person who provides direct care, supervision, behavior management, and early learning opportunities for twelve or fewer children in their family home living quarters for periods of less than twenty-four hours.

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

"Inaccessible to children" means areas kept or items stored in a manner that makes it impossible for children to reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in ~~((you))~~ a licensee's care.

"Infant" means a child birth through eleven months of age.

"License" means an official document that certifies ~~((you have))~~ a licensee has been granted permission by the department to operate a family home child care in compliance with the rules.

"Licensed space," means the indoor and outdoor space approved by the department as useable space where children in care may be present, or space that is otherwise accessible to children.

"Licensee" means the person or persons named on the license as having been issued the license and who are responsible for maintaining compliance with the regulations.

"Licensor" means the person with authority to grant licenses.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296-0350.

"Parent" means a child's parent or legal guardian.

"Premises" means the buildings where the home is located and the adjoining grounds (at the same address) over which the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Primary staff person" means a person who has been authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC, age eighteen years or older, who has responsibilities for the operation of the program and the direct supervision, behavior management and care of children.

"Provider" means the same as licensee.

"Repeatedly" means a violation of a licensing regulation that is written on a facility licensing compliance agreement that occurs more than once during a twelve-month time frame.

"Reportable communicable disease" means an illness that can be spread from one person to another by either direct or indirect contact, and is of the type that is required by law to be reported to the department of health. Examples include Hepatitis, measles, smallpox, and tuberculosis.

"Revocation" means the formal act of closing ~~((you))~~ a licensee's child care business and taking ~~((you))~~ a license from ~~((you))~~ a licensee due to ~~((you))~~ the licensee's failure to follow the rules.

"Sanitize" means a surface must be clean and the number of germs reduced to a level where disease transmissions by that surface are unlikely.

"Staff" means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care who have been authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC.

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

"Summary suspension" means the formal act of immediately stopping your license for a certain time because the health, safety or well being of a child is at risk.

"Supervision of children," means the knowledge of and responsibility for the activity and whereabouts of each child in care and assuring immediate intervention of staff to safeguard a child from harm.

"Terms of the license" means the address, number and ages of children, and the beginning and ending dates listed on the license issued by the department.

"Toddler" means a child twelve months through twenty-nine months of age.

"Useable space" means the space actually available for children to engage in developmentally appropriate activities, that has been inspected and approved by the department for providing child care.

"Weapons" means an instrument or device of any kind that is designed to be used to inflict harm on another person. For example, BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, shotguns, knives.

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

WAC 170-296-0330 ~~((Is there more than one category))~~ Categories of ((license?)) licenses. ~~((We))~~ The department issues three types of licenses:

- (1) Initial (see WAC 170-296-0340);
- (2) Nonexpiring full (see WAC 170-296-0350); and
- (3) Probationary (see WAC 170-296-0440).

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

WAC 170-296-0340 ~~((When will the department issue an))~~ Initial ((license to me?)) licenses. (1) If ~~((you are))~~ an applicant is not currently licensed ~~((we))~~ the department may issue an initial license ~~((to you))~~ to provide child

care when all the health and safety rules have been met, but ~~((you))~~ the applicant:

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

- (i) Supervision;
- (ii) Capacity;
- (iii) Behavior management;
- (iv) Activity and routines; and
- (v) Child records and information.

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

(2) ~~((We))~~ The department may issue an initial license ~~((to you))~~ for a period not to exceed six months, renewable for a period not to exceed two years.

(3) ~~((We))~~ The department must evaluate ~~((your))~~ an applicant's ability to follow all the rules contained in this chapter during the initial licensing period prior to issuing a nonexpiring full license under WAC 170-296-0350.

(4) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

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

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

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-296-0350.

(5) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

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

WAC 170-296-0350 ~~((When will the department issue a))~~ **Nonexpiring full license** ~~((to me?))~~. (1) ~~((We may issue a full license to you when you can demonstrate compliance with all rules contained in this chapter at any time that you have an initial license.~~

~~((2) We must not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in this chapter during the period you have an initial license.))~~ To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

- (a) An annual nonrefundable licensing fee;
- (b) A declaration to the department on a department-approved form indicating:
 - (i) The intent to continue operating a licensed child care program; or
 - (ii) The intent to cease operation on a date certain;
 - (c) A declaration on a department-approved form of compliance with all licensing rules; and
 - (d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as

amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

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

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

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

WAC 170-296-0410 ~~((What happens if I fail))~~ **Failure to pay** ~~((the))~~ **a fine** ~~((?))~~. If ~~((you))~~ a licensee fails to pay a fine within ten days after the fine assessment becomes final, ~~((we))~~ the department may suspend, revoke or not ~~((renew your))~~ continue a license.

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

WAC 170-296-0440 ~~((When would the department issue a))~~ **Probationary** ~~((license?))~~ **licenses.** (1) ~~((We))~~ The department may, but ~~((are))~~ is not required to, issue a probationary license to a licensee in accordance with the process provided in RCW 43.215.290 as part of a corrective action plan with a licensed provider. In addition to issuing ~~((you))~~ the licensee a probationary license, ~~((we))~~ the department may also assess civil penalties or other sanctions.

(2) ~~((We))~~ The department must base our decision about whether to issue a probationary license on the following:

(a) Intentional or negligent noncompliance with the licensing rules;

(b) A history of noncompliance with the rules;

(c) Current noncompliance with the rules; and

(d) Any other factors relevant to the specific situation.

(3) When ~~((we))~~ the department issues ~~((you))~~ a licensee a probationary license ~~((your))~~ the licensee must give notification of ~~((your))~~ his or her probationary license status to:

(a) The parents or guardians of all children in ~~((your))~~ the licensee's care, within five working days of receiving notification from ~~((us))~~ the department; and

(b) New applicants for child care, before enrolling new children.

(4) The notification must be in writing and must be approved by ~~((us))~~ the department prior to being sent.

(5) Within ten working days of receiving notification of the probationary license, ~~((you))~~ the licensee must provide documentation to ~~((us))~~ the department that parents or guardians of all children in ~~((your))~~ the licensee's care have been notified.

(6) ~~((We))~~ The department may issue a probationary license for up to six months~~((-We))~~, and at the department's discretion, may extend the probationary license for an additional six months.

(7) ~~((You))~~ The licensee must return ~~((your))~~ his or her nonexpiring full license to ~~((us))~~ the department.

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

WAC 170-296-0540 ~~((What items am I required to post and where do I post them?))~~ Materials that must be posted. ~~((You))~~ Licensees are required to post these items in the licensed space of your family home child care where the public can easily view them:

(1) The home's child care license issued under this chapter;

(2) Evacuation plans and procedures, that include a written record of the required monthly fire drills and smoke detector checks;

(3) Emergency telephone numbers;

(4) Any civil penalty imposed; and

(5) ~~((You must post))~~ A notification advising parents that ~~((you are))~~ the licensee is required to keep ~~((the following licensing information available))~~ a file on-site for their review~~((:-~~

~~((a))~~ Copies of the most recent family home child care checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and

~~((b))~~ containing copies of the most recent family home child care monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

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

WAC 170-296-0860 ~~((What must I do to prevent))~~ Preventing the spread of infections and communicable diseases(?). (1) You must take precautions to guard against infections and communicable diseases.

(2) ~~((You, your))~~ A licensee, the licensee's staff, and volunteers with a reportable communicable disease in an infectious stage, as defined by the department of health, must not be on duty until ~~((you, your))~~ the licensee, the licensee's staff, and volunteers have approval from the local health department for returning to work.

(3) Applicants for a license, staff, volunteers and persons sixteen years and older authorized to have access to children in a family home child care must have a tuberculin (TB) skin test by the Mantoux method of testing. They must have this skin test upon being employed or licensed unless the person has evidence:

(a) Of negative testing within the previous twelve months;

(b) That they have a negative chest X ray since previously having a positive skin test; or

(c) Of having completed adequate preventive therapy or adequate therapy for active tuberculosis.

(4) The department does not require a tuberculin skin test if a physician indicates that the test is medically inadvisable.

(5) Persons whose tuberculosis skin test is positive must have a chest X ray within thirty days following the skin test.

(6) The department does not require retesting at the time of license ~~((renewal))~~ continuation, unless the licensee or staff person believes they have been exposed to someone with tuberculosis or if their health care provider recommends testing.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 170-296-0260 Do I need to renew my license?

WSR 12-03-079 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-06—Filed January 13, 2012, 2:13 p.m., effective January 20, 2012, 12:01 p.m.]

Effective Date of Rule: January 20, 2012, 12:01 p.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

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

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

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

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

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

Date Adopted: January 13, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

1. Effective 12:01 p.m. January 20 through 11:59 p.m. January 21, 2012, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. January 20 through 11:59 p.m. January 21, 2012, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. January 20 through 11:59 p.m. January 21, 2012, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 22, 2012:

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

WSR 12-03-086

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed January 13, 2012, 3:25 p.m., effective January 13, 2012, 3:25 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.

There are no changes from the previous emergency rules filed October 3, 2011, under WSR 11-20-074.

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: January 13, 2012.

Alan R. Lynn
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 12-04 issue of the Register.

WSR 12-03-100

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed January 17, 2012, 11:08 a.m., effective January 17, 2012, 11:08 a.m.]

Effective Date of Rule: Immediately.

Purpose: To reserve Section 1460 of the Washington State Energy Code, WAC 51-11-1460, to suspend requirements for cold storage facilities.

Citation of Existing Rules Affected by this Order: Suspending WAC 51-11-1460.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025, and 19.27A.045.

Other Authority: Chapters 19.27 and 34.05 RCW.

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

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

Reasons for this Finding: The council finds that the rule causes potential economic hardship on building owners. The economic and energy model used to establish the initial cost-benefit analysis and savings potential did not take into account the types and population of cold storage facilities and systems typically used in Washington state. As the council does not have sufficient data related to the mechanical systems in cold storage facilities, it is felt more detailed analysis is necessary.

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

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

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

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

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

Date Adopted: January 4, 2011 [2012].

Kristyn Clayton
Council Chair

AMENDATORY SECTION (Amending WSR 10-03-115, 10-13-113 and 10-22-056, filed 1/20/10, 6/21/10 and 10/28/10, effective 1/1/11)

WAC 51-11-1460 ((Cold storage.)) Reserved.

~~((1461 Refrigerated warehouse heating and cooling. Heating and cooling systems that supply cold storage spaces and frozen storage spaces in refrigerated warehouses shall meet the requirements of this section.~~

~~1462 Underslab heating. Electric resistance heat shall not be used for the purposes of underslab heating.~~

~~EXCEPTION: Underslab heating systems controlled such that the electric resistance heat is thermostatically controlled and provided with a digital input or other interface approved by the local utility that allows heat to be disabled during on-peak periods defined by the local electric utility.~~

~~1463 Evaporators. Fan-powered evaporators used in coolers and freezers shall conform to the following:~~

~~1. Single phase fan motors less than 1 hp and less than 460 volts shall be electronically commutated motors.~~

~~2. Evaporator fans shall be variable speed and the speed shall be controlled in response to space conditions.~~

~~EXCEPTION: Evaporators served by a single compressor without unloading capability.~~

~~1464 Condensers. Fan-powered condensers shall conform to the following:~~

~~1. Condensers for systems utilizing ammonia shall be evaporatively cooled.~~

~~2. Condensing temperatures for evaporative condensers under design conditions, including, but not limited to, condensers served by cooling towers shall be less than or equal to:~~

~~a. The design wetbulb temperature plus 20°F in locations where the design wetbulb temperature is less than or equal to 76°F;~~

~~b. The design wetbulb temperature plus 19°F in locations where the design wetbulb temperature is between 76°F and 78°F; or~~

~~c. The design wetbulb temperature plus 18°F in locations where the design wetbulb temperature is greater than or equal to 78°F.~~

~~3. Condensing temperatures for air-cooled condensers under design conditions shall be less than or equal to the design drybulb temperature plus 10°F for systems serving frozen storage and shall be less than or equal to the design drybulb temperature plus 15°F for systems serving cold storage.~~

~~EXCEPTION: Unitary condensing units.~~

~~4. All condenser fans for evaporative condensers shall be continuously variable speed, and the condensing temperature control system shall control the speed of all condenser fans serving a common condenser loop in unison. The minimum condensing temperature setpoint shall be less than or equal to 70°F.~~

~~5. All condenser fans for air-cooled condensers shall be continuously variable speed and the condensing temperature or pressure control system shall control the speed of all condenser fans serving a common condenser loop in unison. The minimum condensing temperature setpoint shall be less than or equal to 70°F, or reset in response to ambient drybulb temperature or refrigeration system load.~~

~~6. All single phase condenser fan motors less than 1 hp and less than 460 volts shall be either permanent split capacitor or electronically commutated motors.~~

~~1465 Compressors. Compressor systems utilized in refrigerated warehouses shall conform to the following:~~

~~1. Compressors shall be designed to operate at a minimum condensing temperature of 70°F or less.~~

~~2. The compressor speed of a screw compressor greater than 50 hp shall be controllable in response to the refrigeration load or the input power to the compressor shall be controlled to be less than or equal to 60% of full load input power when operated at 50% of full refrigeration capacity.~~

~~EXCEPTION: Refrigeration plants with more than one dedicated compressor per suction group.)~~

WSR 12-03-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-07—Filed January 17, 2012, 3:04 p.m., effective January 18, 2012]

Effective Date of Rule: January 18, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900G; 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: Condit Dam on the White Salmon River was breached on October 26, 2011. The river had been closed to sport fishing due to the unstable river conditions as a result of this action. River conditions have stabilized enough to allow sport fishing to reopen below the powerhouse. Returning hatchery steelhead, both winter and summer run, are available for sport harvest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: January 17, 2012.

Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective January 18, 2012:

WAC 232-28-61900G	Exceptions to statewide rules—White Salmon River. (12-286)
-------------------	--

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—White Salmon River. Notwithstanding the provisions of WAC 232-28-619, effective January 18, 2012, until further notice, it is permissible to fish for steelhead in waters of the White Salmon River from the mouth to the county bridge below the powerhouse. Daily limit of two hatchery steelhead. All other species and salmon must be released.