

WSR 15-15-002
EMERGENCY RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed July 1, 2015, 12:31 p.m., effective July 1, 2015, 12:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is amending rules and creating new rules in order to implement new federal regulations under the federal Patient Protection and Affordable Care Act. This filing is to correctly reference rules that were final January 1, 2014, in the long-term care medical rule in addition to the elimination of the presumptive disability program as an eligibility group. Aging and long-term support administration is adding a residential waiver program to facilitate discharges from state hospitals.

HCA is also amending and creating rules to implement the community first choice (CFC) option effective July 1, 2015, as directed by the Washington state legislature. CFC affects rules already open as an existing emergency filing under WSR 15-09-084. Therefore, HCA is refiling the emergency rules and adding the new CFC option.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-513-1300, 182-513-1364, 182-513-1365, 182-513-1366 and 182-515-1500; and amending WAC 182-507-0125, 182-512-0960, 182-512-0400, 182-513-1301, 182-513-1305, 182-513-1315, 182-513-1325, 182-513-1330, 182-513-1340, 182-513-1345, 182-513-1350, 182-513-1363, 182-513-1364, 182-513-1365, 182-513-1366, 182-513-1367, 182-513-1380, 182-513-1395, 182-513-1400, 182-513-1405, 182-513-1415, 182-513-1425, 182-513-1430, 182-513-1450, 182-513-1455, 182-515-1500, 182-515-1505, 182-515-1506, 182-515-1507, 182-515-1508, 182-515-1509, 182-515-1510, 182-515-1511, 182-515-1512, 182-515-1513, and 182-515-1514.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Patient Protection and Affordable Care Act established under Public Law 111-148; and Code of Federal Regulations at 42 C.F.R. § 431, 435, and 457, and at 45 C.F.R. § 155. Section 1917 of the Social Security Act.

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

Reasons for this Finding: The agency has been working diligently with client advocates and other stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules were delayed due in part to the receipt of final federal rules governing this process. These emergency rules are needed while the permanent rule-making process is being completed.

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 16, Amended 36, Repealed 5.

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

Date Adopted: July 1, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-507-0125 State-funded long-term care services program. (1) The state-funded long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and ~~((disability services))~~ long-term supports administration ~~((ADSA))~~ (AL TSA) that caseload limits will not be exceeded as a result of the authorization.

(2) Long-term care services are defined in this section as services provided in one of the following settings:

(a) In a person's own home, as described in WAC 388-106-0010;

(b) Nursing facility, as defined in WAC 388-97-0001;

(c) Adult family home, as defined in RCW 70.128.010;

(d) Assisted living facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301;

(e) Enhanced adult residential care facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301;

(f) Adult residential care facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301.

(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (f) of this section unless nursing facility care is required to sustain life.

(4) To be eligible for the state-funded long-term care services program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC ~~((388-503-0505))~~ 182-503-0505 (2) and (3) ~~((a), (b), (e), and (f))~~ with the exception of subsection (3)(c) and (d) of this section;

(b) Reside in one of the settings described in subsection (2) of this section;

(c) Attain institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;

(e) Not have a penalty period due to a transfer of assets as described in WAC ~~((388-513-1363, 388-513-1364, 388-~~

~~513-1365, and 388-513-1366))~~ 182-513-1363, 182-513-1364, or 182-513-1365;

(f) Not have equity interest in a primary residence more than the amount described in WAC ~~((388-513-1350 (7)(a)(ii)))~~ 182-513-1350; and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter ~~((388-564))~~ 182-516 WAC.

(5) An adult who is related to the supplemental security income (SSI) program as described in WAC ~~((388-475-0050))~~ 182-512-0050 (1), (2), and (3) must meet the financial requirements described in WAC ~~((388-513-1325, 388-513-1330, and 388-513-1350))~~ 182-513-1315.

(6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC ~~((388-505-0250 or 388-505-0255))~~ 182-514-0230.

(7) An adult who is not eligible for the state-funded long-term care services program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

(a) WAC ~~((388-513-1395))~~ 182-513-1395 for adults related to SSI; or

(b) WAC ~~((388-505-0255))~~ 182-514-0255 for adults up to age twenty-one related to family institutional medical.

(8) All adults qualifying for the state-funded long-term care services program will receive CN scope of medical coverage described in WAC ~~((388-501-0060))~~ 182-500-0020.

(9) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual residing in a nursing home, see rules described in WAC ~~((388-513-1380))~~ 182-513-1380.

(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC ~~((388-515-1505))~~ 182-515-1505.

(c) For an individual eligible under the family institutional program, see WAC ~~((388-505-0265))~~ 182-514-0265.

(10) A person is not eligible for state-funded long-term care services if that person entered the state specifically to obtain medical care.

(11) A person eligible for the state-funded long-term care services program is certified for a twelve month period.

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources. (1) For SSI-related medical programs, a vehicle is defined as anything used for transportation. In addition to cars and trucks, a vehicle can include boats, snowmobiles, and animal-drawn vehicles.

(2) One vehicle is excluded regardless of its value, if it is used to provide transportation for the ~~((disabled))~~ SSI-related person or a member of the person's household.

(3) ~~((For a person receiving SSI-related institutional coverage who has a community spouse, one vehicle is excluded regardless of its value or its use. See WAC 182-513-1350 (7)(b).))~~

(4)) A vehicle used as the person's primary residence is excluded as the home, and does not count as the one excluded vehicle under subsection (2) ~~((or (3)))~~ of this section.

~~((5) All other vehicles, except those excluded under WAC 182-512-0350 (11) through (14), are treated as nonliquid resources and the equity value is counted toward the resource limit.))~~

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0960 SSI-related medical—Allocating income—~~((How the agency considers income and resources when determining eligibility for a person applying for noninstitutional Washington apple health (WAH) when another household member is receiving institutional WAH))~~ **Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS).** ~~((1) The agency follows rules described in WAC 182-513-1315 for a person considered to be in institutional WAH, which means a person who is either residing in a medical institution, or approved for a home and community based waiver, or approved for the WAH institutional hospice program. The rules in this section describe how the agency considers household income and resources when the household contains both institutional and noninstitutionalized household members.~~

~~((1) The agency follows rules described in WAC 182-513-1315 for a person considered to be in institutional WAH, which means a person who is either residing in a medical institution, or approved for a home and community based waiver, or approved for the WAH institutional hospice program. The rules in this section describe how the agency considers household income and resources when the household contains both institutional and noninstitutionalized household members.~~

(2) An institutionalized person (adult or child) who is not SSI-related may be considered under the long-term care for families and children programs described in WAC 182-514-0230 through 182-514-0265.

(3) The agency considers the income and resources of spouses as available to each other through the end of the month in which the spouses stopped living together. See WAC 182-513-1330 and 182-513-1350 when a spouse is institutionalized.

(4) The agency considers income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a boarding home (assisted living, enhanced adult residential center, adult residential center), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disabilities group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(5) The agency considers income and resources jointly when both spouses are placed in a boarding home, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

(6) When determining SSI-related WAH categorically needy (CN) or medically needy (MN) eligibility for a community spouse applying for health care coverage, the agency counts:

(a) The separate income of the community spouse; plus

(b) One half of any community income received by the community spouse and the institutionalized spouse; plus

~~(e) Any amount allocated to the community spouse from the institutionalized spouse. The terms "community spouse" and "institutional spouse" are defined in WAC 182-513-1301.~~

~~(7) For the purposes of determining the countable income of a community spouse applying for health care coverage as described in subsection (6) of this section, it does not matter whether the spouses reside together or not. Income that is allocated and actually available to a community spouse is considered that person's income.~~

~~(8) For the purposes of determining the countable income of a community spouse or children applying for health care coverage under modified adjusted gross income (MAGI)-based family, pregnancy or children's WAH programs, the agency uses the following rules to determine if the income of the institutionalized person is considered in the eligibility calculation:~~

~~(a) When the institutionalized spouse or parent lives in the same home with the community spouse and/or children, their income is counted in the determination of household income following the rules for the medical program that is being considered.~~

~~(b) When the institutionalized spouse or parent does not live in the same home as the spouse and/or children, only income that is allocated and available to the household is counted.~~

~~(9) When determining the countable income of a community spouse applying for health care coverage under the WAH-MN program, the agency allocates income from the community spouse to the institutionalized spouse in an amount up to the one-person effective medically needy income level (MNIL) less the institutionalized spouse's income, when:~~

~~(a) The community spouse is living in the same household as the institutionalized spouse;~~

~~(b) The institutionalized spouse is receiving home and community-based waiver or institutional hospice services described in WAC 182-515-1505; and~~

~~(c) The institutionalized spouse has gross income of less than the MNIL.~~

~~(10) See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related persons. A separate medical assistance unit is always established for persons who meet institutional status described in WAC 182-513-1320.)) (1) General information.~~

(a) This section describes how the agency determines household income and resources when the household contains both institutional and noninstitutional household members.

(b) A separate medical assistance unit is always established for persons who meet institutional status under WAC 182-513-1320. See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related people.

(c) The agency follows rules and definitions under chapters 182-513 and 182-515 WAC for a person residing in a medical institution, approved for a home and community based (HCB) waiver, Program of All-Inclusive Care for the Elderly (PACE), roads to community living (RCL), community first choice (CFC), or for the hospice program.

(d) Throughout this section, "home" means "own home" as defined in WAC 388-106-0010.

(e) Eligibility for an institutionalized person who is not SSI-related may be determined under the MAGI-based long-term care program under chapter 182-514 WAC.

(f) The income and resources of each spouse are available to the other through the end of the month in which the spouses stopped living together.

(g) The agency determines income and resources separately starting the first day of the month following the month of separation if spouses stop living together because of placement in an alternate living facility (ALF) and:

(i) Only one spouse enters the ALF;

(ii) Both spouses enter the same ALF but have separate rooms; or

(iii) Both spouses enter separate ALFs.

(h) If spouses share a room in an ALF, the agency determines that they live together.

(2) If the community spouse applies for coverage but the spouse receiving LTSS lives in an institution:

(a) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(b) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligibility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse.

(3) If the community spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives HCB waiver, PACE, RCL, or hospice, the agency counts income and resources under this chapter.

(4) If the spousal impoverishment protections community (SIPC) spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives community first choice (CFC), the agency counts income and resources under this chapter.

(5) If the community spouse applies for coverage but his or her spouse receives HCB waiver, PACE, RCL, or hospice in an ALF:

(a) If the community spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(i) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(ii) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligibility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse.

(b) If the community spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(6) If the SIPC spouse applies for coverage but his or her spouse receives CFC in an ALF:

(a) If the SIPC spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(i) The agency counts income under this chapter; and

(ii) The agency counts resources under this chapter, plus any resources allocated to the SIPC spouse when eligibility for the spousal impoverishment protections institutionalized

(SIPI) spouse was determined, but that remain in the name of the SIPI spouse.

(b) If the SIPC spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(7) If the community spouse is not eligible for categorically needy (CN) coverage:

(a) If the community spouse is not eligible for CN coverage, the agency determines eligibility under the medically needy (MN) program;

(b) The agency allocates income to the institutionalized spouse before comparing the community spouse's income to the medically needy income level (MNIL) if:

(i) The community spouse lives in the same household as the institutionalized spouse;

(ii) The institutionalized spouse is receiving home and community-based waiver services under WAC 182-515-1505 or institutional hospice services under WAC 182-513-1240; and

(iii) The institutionalized spouse has gross income under the MNIL.

(c) The allocation cannot exceed the one-person effective MNIL minus the institutionalized spouse's income.

(8) Modified adjusted gross income (MAGI) determination for households that contain an institutionalized individual.

When determining the countable income of a community spouse or children applying for health care coverage under MAGI-based family, pregnancy, or children's programs, the agency uses rules under WAC 182-506-0010 to determine if the income of the institutionalized person is counted.

NEW SECTION

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513, 182-514, and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. Additional medical definitions can be found in chapter 182-500 WAC.

"Adequate consideration" means the reasonable value of the goods or services received in exchange for transferred property that approximates the reasonable value of the property transferred.

"Agency" means the Washington state health care authority and includes the agency's designee.

"Aging and long-term support administration (AL TSA)" means the administration by that name within the Washington state department of social and health services (DSHS).

"Alternate living facility (ALF)" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) An adult family home (AFH) licensed under chapter 70.128 RCW.

(b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) An adult residential rehabilitation center (ARRC) described in WAC 388-865-0235.

(d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) described in WAC 388-106-0045.

"Comprehensive assessment reporting evaluation (CARE) assessment" means the evaluation process defined in chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

"Clothing and personal incidentals (CPI)" means the cash payment (described in WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act and described in chapter 388-106 WAC.

"Community options program entry system (COPEs)" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act described in chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protection institutionalized (SIPI) spouse to the spousal impoverishment protection community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent institutionalization.

"Developmental disabilities administration (DDA) home and community based (HCB) waiver" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act described in chapter 388-845 WAC authorized by DDA.

"Dependent" means an adult child, a parent, or a sibling meeting the definition of a tax dependent under WAC 182-500-0105; or a minor child.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market at the time of transfer or assignment.

"Home and community based services (HCBS)" means LTSS provided in the home or a residential setting to persons assessed by the department.

"Home and community based (HCB) waiver programs" means programs authorized under Section 1915(c) of the Social Security Act. The waiver authority enables states to waive federal medicaid requirements to provide LTSS to medicaid beneficiaries who would otherwise require the level of care provided in a hospital, nursing facility, or intermediate care facility for the intellectually disabled (ICF-ID).

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutional services" means services paid for by Washington apple health, and provided:

- (a) In a medical institution;
- (b) Through a home and community based (HCB) waiver; or
- (c) Through programs based on HCB waiver rules for post-eligibility treatment of income described in chapter 182-515 WAC.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

- (a) Has attained institutional status under WAC 182-513-1320; and
- (b) Is legally married to a person who is not in a medical institution.

"Likely to reside" means the agency reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports" includes institutional and noninstitutional services authorized by AL TSA and DDA.

"Look-back period" means the number of months prior to the month of application that the agency will consider transfers of assets for programs subject to transfer of asset penalties.

"Medicaid personal care (MPC)" means a medicaid state plan program authorized under RCW 74.09.520.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is described in WAC 182-513-1320.

"Noninstitutional medical assistance" means any Washington apple health medical programs not based on

HCBS waiver rules in chapter 182-515 WAC, or rules based on residing in an institution thirty days or more.

"Nursing facility level of care (NFLOC)" is described in WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services they receive each month; it is the amount remaining after the post-eligibility process in WAC 182-513-1380, 182-515-1509, and 182-515-1514.

"Penalty period" means the period of time during which a person is not eligible to receive services subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for clothing and other personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, alternate living facility, or at home. Personal needs allowances are found at: <http://hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

"Residential support waiver (RSW)" means a 1915(c) medicaid waiver program authorized under RCW 74.39A.-030. Persons eligible for this program may receive long-term care services in a licensed adult family home with a contract to provide specialized behavior services.

"Short stay" means residing in a medical institution for a period of twenty-nine days or less.

"Special income level (SIL)" means the monthly income standard for the categorically needy (CN) program that is three hundred percent of the SSI federal benefit rate (FBR).

"Spousal impoverishment" means financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The spousal allocation process is used to discourage the impoverishment of a spouse due to the need for LTSS by their spouse. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through December 31, 2018, services authorized under 1915 (i) and (k) of the Social Security Act.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who only qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program because of the spousal impoverishment protections in WAC 182-513-1220.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"State spousal resource standard" means minimum resource standard allowed for a community spouse.

"Third-party resource (TPR)" means funds paid to a person by a third party where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. Third-party resources are described under WAC 182-501-0200.

"Transfer of a resource" or **"transfer of an asset"** means changing ownership or title of an asset such as income, real property, or personal property by one of the following:

- (a) An intentional act that changes ownership or title; or

(b) A failure to act that results in a change of ownership or title.

"Transfer date for real property" or **"transfer date of interest in real property"** means:

(a) The date of transfer for real property is the day the deed is signed by the grantor if the deed is recorded; or

(b) The date of transfer for real property is the day the signed deed is delivered to the grantee.

"Transfer month" means the calendar month in which resources are legally transferred.

"Uncompensated value" means the fair market value (FMV) of an asset at the time of transfer minus the value of compensation the person receives in exchange for the asset.

"Undue hardship" means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria described in WAC 182-513-1367.

"Value of compensation received" means the consideration the purchaser pays or agrees to pay. Compensation includes:

(a) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable purchase agreement whereby the person transfers the asset; and

(b) The payment or assumption of a legal debt the seller owes in exchange for the asset.

"Veterans benefits" means different types of benefits paid by the federal department of veterans affairs (VA). Some may include additional allowances for:

(a) Aid and attendance for a person needing regular help from another person with the activities of daily living;

(b) A person who is housebound;

(c) Improved pension, the newest type of VA disability pension, available to veterans and their survivors whose income from other sources, including service connected disability, is below the improved pension amount;

(d) Unusual medical expenses (UME), determined by the VA based on the amount of unreimbursed medical expenses reported by the person who receives a needs-based benefit. The VA can use UME to reduce countable income to allow the person to receive a higher monthly VA payment, a one-time adjustment payment, or both;

(e) Dependent allowance veteran's payments made to, or on behalf of, spouses of veterans or children regardless of their ages or marital status. Any portion of a veteran's payment that is designated as the dependent's income is countable income to the dependent; or

(f) Special monthly compensation (SMC). Extra benefit paid to a veteran in addition to the regular disability compensation to a veteran who, as a result of military service, incurred the loss or loss of use of specific organs or extremities.

"Waiver programs/services" means programs for which the federal government authorizes exceptions to federal medicaid rules. In Washington state, home and community based (HCB) waiver programs are authorized by the developmental disabilities administration (DDA), or home and community services (HCS).

NEW SECTION

WAC 182-513-1200 Long-term services and supports authorized under Washington apple health programs. (1) Certain long-term services and supports (LTSS) programs are available to people eligible for noninstitutional Washington apple health (WAH) coverage who meet the functional requirements for the program based on either:

(a) An assessment for either in-home or residential services in an alternate living facility (ALF); or

(b) Placement in a medical institution.

(2) There are no transfer of asset penalties described in WAC 182-513-1363 for the following noninstitutional LTSS programs:

(a) WAC 182-513-1205 noninstitutional apple health in an ALF. This rule describes the SSI-related CN eligibility criteria for people who are eligible for department-contracted services in an ALF or mental health residential treatment facility (ARTF). It also describes the SSI-related MN eligibility criteria for private-pay clients.

(b) WAC 182-513-1210 Community first choice (CFC) —Overview. This program provides LTSS for both in-home and ALF settings for clients who meet nursing facility level of care.

(c) WAC 182-513-1215 Community first choice (CFC) —Eligibility. This section describes the financial eligibility rules for CFC.

(d) WAC 182-513-1220 Community first choice (CFC) —Spousal impoverishment protections for noninstitutional Washington apple health clients. This section describes how spousal impoverishment protections apply to people who are determined functionally eligible for CFC.

(e) WAC 182-513-1225 Medicaid personal care (MPC). This section describes how a person is financially eligible for personal care services if the person doesn't meet the nursing facility level of care criteria for services under CFC.

(3) There are no transfer of asset penalties under the following programs; however, eligibility is determined using institutional rules described in WAC 182-513-1315 and 182-513-1380 or HCB waiver rules described in chapter 182-515 WAC depending on living arrangement:

(a) WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE). This program provides LTSS under a managed care contract and is available for people who reside in the PACE designated service area.

(b) WAC 182-513-1235 Roads to community living (RCL). This program provides LTSS to people discharging from medical institutions to an in-home or ALF setting.

(c) WAC 182-513-1240 Hospice. This WAC describes the eligibility criteria used for a WAH applicant who has made an election of hospice services, but is not otherwise eligible for a noninstitutional CN or MN program as described in WAC 182-503-0510.

(4) A person who is eligible for CN or MN coverage is eligible for rehabilitation skilled nursing services as part of the benefit package associated with the coverage.

(5) Once a person meets institutional status under WAC 182-513-1320 or no longer meets rehabilitation skilled nursing criteria, the person must be assessed and approved by the department for payment of nursing facility care. Eligibility is redetermined using LTC rules described in WAC 182-513-

1315, with the exception of a person who is eligible under a MAGI-based program described in WAC 182-503-0510(2).

NEW SECTION

WAC 182-513-1205 Determining eligibility for non-institutional coverage in an alternate living facility. This section describes the monthly income standard used to determine eligibility for noninstitutional coverage for a person who lives in a department-contracted alternate living facility (ALF) described in WAC 182-513-1100.

(1) The eligibility criteria for noninstitutional Washington apple health (WAH) in an ALF follows SSI-related medical rules described in WAC 182-512-0050 through 182-512-0960 with the exception of the higher income standard described in subsection (2) of this section.

(2) A person is eligible for noninstitutional coverage under the categorically needy (CN) program if the person's gross monthly income after allowable exclusions described in chapter 182-512 WAC:

(a) Does not exceed the special income level (SIL); and
 (b) Is less than or equal to the person's assessed state rate at a department contracted facility. To determine the CN standard: $((y \times 31) + \$38.84)$, where "y" is the state daily rate. \$38.84 is based on the cash payment standard for a person living in an ALF setting described in WAC 388-478-0006.

(3) A person is eligible for noninstitutional coverage under the medically needy (MN) program if the person's gross monthly income after allowable exclusions described in chapter 182-512 WAC is less than or equal to the person's private rate at a department-contracted facility. To determine the MN standard: $((z \times 31) + \$38.84)$, where "z" is the facility's private daily rate. To determine MN spenddown liability, see chapter 182-519 WAC.

(4) A person's nonexcluded resources cannot exceed the standard described in WAC 182-512-0010.

(5) The agency approves CN noninstitutional coverage for twelve months.

(6) The agency approves MN noninstitutional coverage for a period of months described in chapter 182-504 WAC for an SSI-related person, provided the person satisfies any spenddown liability as described in chapter 182-519 WAC.

(7) A person receiving medicaid personal care (MPC) or community first choice (CFC) pays all of their income to the ALF except a personal needs allowance of \$62.79.

(8) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the payment described in this subsection.

NEW SECTION

WAC 182-513-1210 Community first choice (CFC) —Overview. Community first choice (CFC) is a Washington apple health (WAH) state plan benefit authorized under Section 1915(k) of the Social Security Act. It enables the agency and its contracted entities to deliver person-centered home and community based long-term services and supports (LTSS) to Title XIX medicaid eligible people who meet the institutional level of care described in WAC 388-106-0355. See:

(1) WAC 388-106-0270 through 388-106-0295 for services included within the CFC benefit package.

(2) WAC 182-513-1215 for financial eligibility for CFC services.

NEW SECTION

WAC 182-513-1215 Community first choice (CFC) —Eligibility. (1) An applicant who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the applicant is:

(a) Eligible for a noninstitutional Washington apple health program which provides categorically needy (CN) or alternative benefit plan (ABP) scope of care;

(b) A spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1230; or

(c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.

(2) An applicant whose only coverage is through one of the following programs is not eligible for CFC:

(a) Medically needy program under WAC 182-519-0100;

(b) Premium-based children's program under WAC 182-505-0215;

(c) Medicare savings programs under WAC 182-517-0300;

(d) Family planning program under WAC 182-505-0115;

(e) Take charge program under WAC 182-532-0720;

(f) Medical care services program under WAC 182-508-0005;

(g) Pregnant minor program under WAC 182-505-0117;

(h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;

(i) State-funded long-term care for noncitizens program under WAC 182-507-0125; or

(j) Kidney disease program under chapter 182-540 WAC.

(3) Transfer of asset penalties under WAC 182-513-1363 does not apply to CFC applicants, unless the applicant is applying for long-term services and supports that are only available through one of the HCB waivers under chapter 182-515 WAC.

(4) Post-eligibility treatment of income rules does not apply if eligible under subsection (1)(a) or (b) of this section. People who reside in a residential facility do pay up to the room and board standard. The room and board amount is based on the effective one-person medically needy income level (MNIL) minus the residential personal needs allowance (PNA) except when eligibility is based on the rules in WAC 182-513-1205.

(5) Post-eligibility treatment of income rules does apply if eligible under subsection (1)(c) of this section and receiving a HCB waiver service.

(6) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

(7) PNA, MNIL, and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

NEW SECTION

WAC 182-513-1220 Community first choice (CFC) —Spousal impoverishment protections for noninstitutional Washington apple health clients. (1) The agency determines eligibility using spousal impoverishment protections under this section, when an applicant:

(a) Is married to, or marries a person not in a medical institution;

(b) Meets institutional level of care and eligibility for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295;

(c) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program due to spousal deeming rules under WAC 182-512-0920, or due to exceeding the resource limit in WAC 182-512-0010, or both;

(d) Is ineligible for SSI-related noninstitutional medical assistance in an ALF due to combined spousal resources exceeding the resource limit in WAC 182-512-0010; and

(e) Meets the aged, blindness, or disability criteria under WAC 182-512-0050.

(2) The agency determines countable income using the SSI-related income rules under chapter 182-512 WAC but uses only the applicant's separate income and not the income of his or her spouse.

(3) The agency determines countable resources using the SSI-related resource rules under chapter 182-512 WAC:

(a) For the applicant/recipient the resource standard is two thousand dollars.

(b) For the spouse of the applicant/recipient, resources must be at or below the spousal resource transfer maximum resource standard on the first day of each month.

(c) The resources of the spousal impoverishment protections community (SIPC) spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for CFC services is established unless subsection (8) of this section applies.

(4) The CFC recipient has until the end of the month of the first regularly scheduled eligibility review to transfer joint resources in excess of two thousand dollars to his or her spouse.

(5) If the applicant lives at home and the applicant's separate countable income is at or below the SSI categorically needy income level (CNIL) and the applicant is resource eligible, the applicant is a SIPI spouse and is eligible for noninstitutional CN coverage and CFC services.

(6) If the applicant lives in an alternate living facility (ALF) and the applicant's separate countable income is at or below the standard under WAC 182-513-1205(2) and the applicant is resource eligible, the applicant is a SIPI spouse and is eligible for non-institutional CN coverage and CFC services.

(7) If the applicant is employed and the applicant's separate countable income is at or below the standard under WAC 182-511-1060, the applicant is a SIPI spouse and is eligible for noninstitutional CN coverage and CFC services.

(8) Once a person no longer receives CFC services, eligibility is redetermined without using spousal impoverishment protection under WAC 182-504-0125.

(9) If the applicant's separate countable income is above the standards described in subsections (5), (6), and (7) of this section, the applicant is not eligible for CFC services under this section.

(10) The spousal impoverishment protections described in this section are time-limited and expire on December 31, 2018.

(11) Standards described in this section are located at: <http://hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

NEW SECTION

WAC 182-513-1225 Medicaid personal care (MPC).

(1) Medicaid personal care (MPC) is a state-plan benefit available to a person who is determined functionally eligible for MPC services under WAC 388-106-0200 through 388-106-0235.

(2) A person is financially eligible for MPC services if the person is eligible for a noninstitutional categorically needy (CN) or alternative benefit plan (ABP) Washington apple health program.

(3) MPC services may be provided to a person who resides in their own home, in a department-contracted adult family home (AFH), or in a licensed assisted living facility that is contracted with the department of social and health services to provide adult residential care services.

(4) A person who resides in an alternate living facility (ALF) listed in subsection (3) of this section:

(a) Keeps a personal needs allowance (PNA) of \$62.79; and

(b) Pays room and board up to the statewide room and board amount, unless CN eligibility is determined using rules under WAC 182-513-1205.

(5) A person who receives aged, blind, disabled (ABD) cash assistance in an adult family home keeps a clothing and personal incidentals (CPI) of \$38.84 and pays the rest of his or her cash grant and other available income towards room and board.

(6) A person who receives MPC services under the workers with disabilities program described in chapter 182-511 WAC must pay his or her health care for workers with disabilities (HWD) premium in addition to room and board, if residing in a residential setting.

(7) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to room and board.

(8) Current PNA and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

NEW SECTION

WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE).

(1) The program of all-inclusive care for the elderly (PACE) provides long-term services and supports (LTSS), medical, mental health, and chemical dependency treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

(2) Program rules governing functional eligibility for PACE are listed under WAC 388-106-0700, 388-106-0705, 388-106-0710, and 388-106-0715.

(3) A person is PACE eligible if the person:

(a) Is age:

(i) Fifty-five or older and disabled under WAC 182-512-0050; or

(ii) Sixty-five or older.

(b) Meets nursing facility level of care under WAC 388-106-0355;

(c) Lives in a designated PACE service area;

(d) Meets financial eligibility requirements under this section; and

(e) Agrees to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

(4) Although PACE is not a home and community based (HCB) waiver program, financial eligibility is determined using the HCB waiver rules under WAC 182-515-1505 when living at home or in an alternate living facility (ALF), with the following exceptions:

(a) PACE enrollees are not subject to the transfer of asset provisions described in WAC 182-513-1363; and

(b) PACE enrollees may reside in a medical institution thirty days or longer and still remain eligible for PACE services. The eligibility rules for institutional coverage are under WAC 182-513-1315 and 182-513-1380.

(5) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

NEW SECTION

WAC 182-513-1235 Roads to community living (RCL). (1) Roads to community living (RCL) is a demonstration project, funded by a "money follows the person" grant originally authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

(2) Program rules governing functional eligibility for RCL are described in WAC 388-106-0250 through 388-106-0265. RCL services may be authorized by home and community services (HCS) or the developmental disabilities administration (DDA).

(3) A person must have a continuous stay of at least ninety days in a qualified institutional setting (hospital, nursing home, residential habilitation center) to be eligible for RCL. The ninety-day count excludes days paid solely by medicare, must include at least one day of medicaid paid inpatient services, and the person must be eligible to receive medicaid on the day of discharge.

(4) Once a person is discharged to home or a residential setting under RCL, the person remains continuously eligible for medical coverage for a period of three hundred sixty-five days unless the person:

(a) Returns to an institution for thirty days or longer;

(b) Is incarcerated in a public jail or prison;

(c) No longer wants the RCL services;

(d) Moves out-of-state; or

(e) Dies.

(5) A person may receive RCL services under any federally funded categorically needy (CN), medically needy (MN), alternative benefit plan (ABP), noninstitutional medical, or home and community based (HCB) waiver program.

(6) Changes in income and resources during the continuous eligibility period do not affect eligibility for RCL services. Changes in income and deductions may affect the amount a person must pay toward the cost of care.

(7) A person approved for RCL is not subject to transfer of asset provisions under WAC 182-513-1363 during the continuous eligibility period, but transfer penalties may apply if the person needs HCB waiver or institutional services once the continuous eligibility period has ended.

(8) A person who is not otherwise eligible for a noninstitutional program who accesses RCL services using HCB waiver rules under chapter 182-515 WAC must pay participation toward the cost of RCL services. Cost of care calculations are described in:

(a) WAC 182-515-1509 for home and community services (HCS); and

(b) WAC 182-515-1514 for development disabilities administration (DDA) services.

(9) At the end of the continuous eligibility period, the agency redetermines a person's eligibility for other programs under WAC 182-504-0125.

NEW SECTION

WAC 182-513-1240 Hospice. (1) General information.

(a) The hospice program provides palliative care to people who elect to receive hospice services and are certified as terminally ill by their physician.

(b) Program rules governing election of hospice are under chapter 182-551 WAC.

(c) A person may revoke a hospice election at any time by signing a revocation statement.

(d) Personal needs allowance and income and resource standards for hospice and home and community based (HCB) waiver programs are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(2) When hospice is a covered service.

(a) A person who receives coverage under a categorically needy (CN), medically needy (MN), or alternative benefit plan (ABP) program is eligible for hospice services as part of the program specific benefit package.

(b) A person who receives coverage under the alien emergency medical (AEM) program under WAC 182-507-0110 may be eligible for payment for hospice services if pre-approved by the agency.

(3) The hospice program.

(a) A person who is not otherwise eligible for a CN, MN, or ABP noninstitutional program may be eligible for CN coverage for hospice services using home and community based (HCB) waiver rules under WAC 182-515-1505.

(b) When a person is only eligible for hospice using HCB waiver rules, the agency follows rules under WAC 182-515-1505 through 182-515-1509, and institutional rules under WAC 182-513-1315, except that:

(i) A person on the hospice program is not subject to the transfer of asset provisions under WAC 182-513-1363;

(ii) A person on the hospice program may reside in a medical institution, including a hospice care center, thirty days or longer and remain eligible for hospice services; and

(iii) A person residing at home on hospice with gross income over the special income limit (SIL) is not eligible for CN coverage. The rules under WAC 182-515-1508 (2)(c)(ii) apply only to people who receive an HCB waiver service. If gross income is over the SIL, the agency determines eligibility under WAC 182-519-0100.

(c) A person eligible for hospice using HCB waiver rules may be required to participate income and third-party resources (TPR) under WAC 182-501-0200 toward the cost of hospice services. The cost of care calculation is described in WAC 182-515-1509.

(d) A person may receive HCB waiver services in addition to hospice services. The person's responsibility to participate income and TPR toward the cost of care is applied to the HCB waiver service provider first.

(4) Hospice in a medical institution:

(a) A person who elects hospice who resides in a medical institution for thirty days or longer and has income:

(i) Equal to or less than the SIL is eligible for CN coverage. Eligibility for institutional hospice is determined under WAC 182-513-1315.

(ii) Over the SIL is eligible for MN coverage under WAC 182-513-1245.

(b) A person eligible for hospice in a medical institution may have to pay participation toward the cost of nursing facility or hospice care center services. The cost of care calculation is described in WAC 182-513-1380.

(5) Changes in coverage. The agency redetermines a person's eligibility under WAC 182-504-0125 if the person:

(a) Revokes hospice and is only eligible for coverage using HCB waiver rules described in subsection (3) of this section; or

(b) Loses eligibility under a CN, MN, or ABP program.

NEW SECTION

WAC 182-513-1245 Medically needy hospice in a medical institution. (1) General information.

(a) To be eligible for hospice when living in a medical institution under the SSI-related medically needy (MN) program, a person must:

(i) Meet program requirements under WAC 182-513-1315;

(ii) Have gross nonexcluded income in excess of the special income level (SIL) but below the monthly department-contracted rate in the institution;

(iii) Meet the financial requirements of subsection (4) or (5) of this section; and

(b) Elect hospice under chapter 182-551 WAC.

(2) Financial eligibility information.

(a) The agency determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.

(b) The agency determines a person's countable income by:

(i) Excluding income under WAC 182-513-1340;

(ii) Determining available income under WAC 182-513-1325 or 182-513-1330;

(iii) Disregarding income under WAC 182-513-1345; and

(iv) Deducting medical expenses that were not used to reduce excess resources under WAC 182-513-1350.

(3) Determining the department-contracted daily rate in an institution, and the institutional medically needy income level (MNIL).

(a) The agency determines the department-contracted daily rate in an institution and the institutional MNIL based on the living arrangement, and whether the person is entitled to medicare payment for hospice services.

(b) When the person resides in a hospice care center:

(i) If entitled to medicare payment for hospice services, the department-contracted daily rate is the state daily hospice care center rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(ii) If not entitled to medicare payment for hospice services, the department-contracted daily rate is the state daily hospice care center rate, plus the state daily hospice rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(c) When the person resides in a nursing facility:

(i) If entitled to medicare payment for hospice services, the department-contracted daily rate is ninety-five percent of the nursing facility's state daily rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(ii) If not entitled to medicare payment for hospice services, the department-contracted daily rate is ninety-five percent of the nursing facility's state daily rate, plus the state daily hospice rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(4) Eligibility for payment of institutional hospice services and the MN program.

(a) If a person's countable income plus excess resources is less than, or equal to, the department-contracted daily rate, under subsection (3) of this section, times the number of days residing in the facility, the person:

(i) Is eligible for payment of institutional hospice services;

(ii) Is approved MN coverage for a twelve-month certification period; and

(b) Pays income and excess resources towards the cost of care under WAC 182-513-1380.

(5) Eligibility for institutional MN spenddown.

(a) If a person's countable income is more than the department-contracted daily rate times the number of days residing in the facility, but less than the private rate for the same period, the person:

(i) Is not eligible for payment of institutional hospice services; and

(ii) Is eligible for the MN spenddown program for a three- or six-month base period when qualifying medical expenses meet a person's spenddown liability.

(b) Spenddown liability is calculated by subtracting the institutional MNIL from the person's countable income for

each month in the base period. The values from each month are added together to determine the spenddown liability.

(c) Qualifying medical expenses used to meet the spenddown liability are described in WAC 182-519-0110, with the following exception: Only costs for hospice services above the department-contracted daily rate times the number of days residing in the facility are qualifying medical expenses.

(6) Eligibility for MN spenddown.

(a) If a person's countable income is more than the private rate times the number of days residing in the facility, the person is not eligible for payment of institutional hospice services and institutional MN spenddown; and

(b) Eligibility for MN spenddown is determined under chapter 182-519 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1315 ((Eligibility for long-term care (institutional, waiver, and hospice) services.)) General eligibility requirements for Washington apple health long-term care programs. ((This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state funded long-term care services program described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 182-503-0505 (2) and (3)(a) through (g);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for home and community services (HCS) waiver and nursing facility coverage; or

(d) Meet criteria for division of developmental disabilities (DDD) assessment under chapter 388-828 WAC for DDD waiver or institutional services;

(e) Not have a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365;

(f) Not have equity interest in their primary residence greater than the home equity standard described in WAC 388-513-1350; and

(g) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC:

(i) This is required for all institutional or waiver services and includes those individuals receiving supplemental security income (SSI).

(ii) A signed and completed eligibility review for long-term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the supplemental security income (SSI) program as described in WAC 182-512-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

(b) Be approved and receiving aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC 388-424-0010; or

(c) Be eligible for CN apple health for kids described in WAC 182-505-0210; or CN family medical described in WAC 182-505-0240; or family and children's institutional medical described in WAC 182-514-0230 through 182-514-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services for noncitizen children require prior approval by aging and disability services administration (ADSA) under the state funded nursing facility program described in WAC 182-507-0125; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC 182-512-0050 are not eligible for waiver services.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC 388-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPES, New Freedom, PACE, and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers.

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 182-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI-related clients with income over the effective one-person MNIL and gross income at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

~~(a) Eligible for MN children's medical program described in WAC 182-514-0230, 182-514-0255, or 182-514-0260; or~~

~~(b) Related to the SSI program as described in WAC 182-512-0050 and meet all requirements described in WAC 388-513-1395; or~~

~~(c) Eligible for the MN SSI-related program described in WAC 182-512-0150 for hospice clients residing in a home setting; or~~

~~(d) Eligible for the MN SSI-related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.~~

~~(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 388-513-1395.~~

~~(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:~~

~~(a) Considers resource eligibility and standards described in WAC 388-513-1350; and~~

~~(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365.~~

~~(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:~~

~~(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;~~

~~(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;~~

~~(c) Disregards income for the MN program as described in WAC 388-513-1345; and~~

~~(d) Follows program rules for the MN program as described in WAC 388-513-1395.~~

~~(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.~~

~~(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 for:~~

~~(a) Institutional services in a medical institution; or~~

~~(b) Hospice services in a medical institution.~~

~~(11) The department determines eligibility for state funded programs under the following rules:~~

~~(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.~~

~~(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.~~

~~(c) A noncitizen client who is not eligible under subsections (11)(a) or (b) and needs long-term care services may be eligible under WAC 182-507-0110 and 82-507-0125. This program must be pre-approved by aging and disability services administration (ADSA).~~

~~(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:~~

~~(a) Has attained institutional status as described in WAC 388-513-1320; and~~

~~(b) Is under the age of twenty-one at the time of application; or~~

~~(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or~~

~~(d) Is at least sixty-five years old.~~

~~(13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.~~

~~(14) If an individual under age twenty-one is not eligible for medicaid under SSI-related in WAC 182-512-0050 or ABD cash assistance described in WAC 388-400-0060 or MCS described in WAC 182-508-0005, consider eligibility under WAC 182-514-0255 or 182-514-0260.~~

~~(15) Noncitizen clients under age nineteen can be considered for the apple health for kids program described in WAC 182-505-0210 if they are admitted to a medical institution for less than thirty days. Once a client resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 182-514-0260 and must be preapproved for coverage by ADSA as described in WAC 182-507-0125.~~

~~(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 182-507-0125. These clients must be preapproved by ADSA.~~

~~(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:~~

~~(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;~~

~~(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;~~

~~(c) For clients receiving DDD CN waiver services see WAC 388-515-1514; or~~

~~(d) For TANF-related clients residing in a medical institution see WAC 182-514-0265.~~

~~(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN medicaid. These groups are described in WAC 182-512-0880.) This section describes how the agency determines a person's eligibility for long-term care coverage for people residing in a medical institution, receiving home and community based (HCB) waiver services, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements under the state-funded medical care services (MCS) program and the state-funded long-term care services program.~~

This chapter includes the following sections:

(1) WAC 182-513-1316, General eligibility requirements for Washington apple health long-term care programs.

(2) WAC 182-513-1317, Income and resource criteria for an institutionalized person.

(3) WAC 182-513-1318, Income and resource criteria for home and community based (HCB) waiver programs and hospice.

(4) WAC 182-513-1319, State-funded programs for non-citizens.

NEW SECTION

WAC 182-513-1316 General eligibility requirements for Washington apple health long-term care programs.

(1) To be eligible for long-term care (LTC) services, a person must:

(a) Meet the general eligibility requirements for medical programs under WAC 182-503-0505;

(b) Attain institutional status under WAC 182-513-1320;

(c) Meet the functional eligibility under:

(i) Chapter 388-106 WAC for a home and community services (HCS) waiver or nursing facility coverage; or

(ii) Chapter 388-828 WAC for developmental disabilities administration (DDA) home and community based (HCB) waiver or institutional services; and

(d) Meet either:

(i) SSI-related criteria under WAC 182-512-0050; or

(ii) MAGI-based criteria under WAC 182-503-0510(2), if residing in a medical institution. A person who is eligible for MAGI-based coverage is not subject to the provisions described in subsection (2) of this section.

(2) A supplemental security income (SSI) person or an SSI-related person who needs LTC services must also:

(a) Not have a penalty period of ineligibility under WAC 182-513-1363;

(b) Not have equity interest in his or her primary residence greater than the home equity standard under WAC 182-513-1350; and

(c) Disclose to the state any interest the applicant or spouse has in an annuity, which must meet annuity requirements under chapter 182-516 WAC.

(3) An SSI recipient must submit a signed health care coverage application form attesting to the provisions described in subsection (2) of this section. A signed and completed eligibility review for long-term care benefits can be accepted for SSI people applying for long-term care services.

(4) To be eligible for HCB waiver services, a person must also meet the program requirements under:

(a) WAC 182-515-1505 through 182-515-1509 for HCS HCB waivers; or

(b) WAC 182-515-1510 through 182-515-1514 for DDA HCB waivers.

(5) The agency determines a person's eligibility as it does for a single person when the person's spouse has already been determined eligible for LTC services.

NEW SECTION

WAC 182-513-1317 Income and resource criteria for an institutionalized person. (1) This section provides an overview of the income and resource eligibility rules for a person who lives in an institutional setting.

(2) To determine income eligibility for an SSI-related long-term care (LTC) applicant under the categorically needy (CN) program, the agency:

(a) Considers income available under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340 and chapter 182-512 WAC;

(c) Compares remaining gross nonexcluded income to the special income level (SIL). A person's gross income must be equal to or less than the SIL to be eligible for CN coverage.

(3) To determine income eligibility for an SSI-related LTC client under the medically needy (MN) program, the agency follows the income standards and eligibility rules under WAC 182-513-1395.

(4) To be resource eligible under the SSI-related LTC CN or MN program, the person must:

(a) Meet the resource eligibility requirements under WAC 182-513-1350;

(b) Not have a penalty period of ineligibility due to a transfer of asset under WAC 182-513-1363;

(c) Disclose to the state any interest the person or his or her spouse has in an annuity, which must meet the annuity requirements under chapter 182-516 WAC.

(5) A person is eligible for medicaid as a resident in eastern or western state hospital if the person:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is under age twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to his or her twenty-first birthday and the services extend beyond this date and the person has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(6) To determine long-term care CN or MN income eligibility for a person eligible under a MAGI-based program, the agency follows the rules under chapter 182-514 WAC.

(7) There is no asset test for MAGI-based LTC programs under WAC 182-514-0245.

(8) The agency determines a person's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For an SSI-related person residing in a medical institution, see WAC 182-513-1380;

(b) For an SSI-related person on a home and community based waiver, see chapter 182-515 WAC.

NEW SECTION

WAC 182-513-1318 Income and resource criteria for home and community based (HCB) waiver programs and hospice.

(1) This section provides an overview of the income and resource eligibility rules for a person to be eligible for a home and community based (HCB) waiver program described in chapter 182-515 WAC or the hospice program under WAC 182-513-1240 and 182-513-1245.

(2) To determine income eligibility for an SSI-related long-term care (LTC) HCB waiver under the categorically needy (CN) program, the medicaid agency:

(a) Considers income available under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340;

(c) Compares remaining gross nonexcluded income to:

(i) The special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); or

(ii) For home and community based (HCB) service programs authorized by aging and long-term supports administration (AL TSA), a higher standard is determined following the rules described in WAC 182-515-1508 if a client's income is above the SIL but net income is below the medically needy income level (MNIL).

(3) A person who receives MAGI-based coverage is not eligible for HCB waiver services unless found eligible based on program rules in chapter 182-515 WAC.

(4) To be resource eligible under the SSI-related LTC CN HCB waiver programs, the person must:

(a) Meet the resource eligibility requirements and standards under WAC 182-513-1350;

(b) Not have a penalty period of ineligibility due to a transfer of asset under WAC 182-513-1363;

(c) Disclose to the state any interest the person or his or her spouse has in an annuity and meet the annuity requirements under chapter 182-516 WAC.

(5) The agency allows an HCB waiver person to use verified unpaid medical expenses to reduce countable resources in excess of the standard under WAC 182-513-1350.

(6) The agency determines a person's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For people receiving HCS HCB waiver services, see WAC 182-515-1509;

(b) For people receiving DDA HCB waiver services, see WAC 182-515-1514.

(7) HCB waiver recipients who are "deemed eligible" for SSI benefits under WAC 182-512-0880 do not pay participation toward their cost of personal care. People living in a residential setting do pay room and board under WAC 182-515-1505 through 182-515-1509 or 182-515-1514.

(8) To be eligible for hospice services under the CN program, see WAC 182-513-1240.

(9) To be eligible for hospice services in a medical institution under the MN program, see WAC 182-513-1245.

NEW SECTION

WAC 182-513-1319 State-funded programs for non-citizens. (1) This section describes the state-funded programs that are available for noncitizens who do not meet the citizenship criteria under WAC 182-503-0535 for federally funded coverage.

(2) Lawfully residing noncitizens who need nursing facility care or care in an alternate living facility may receive coverage for long-term care (LTC) services if the person meets the eligibility and incapacity criteria of the medical care services (MCS) program under WAC 182-508-0005.

(3) People who receive MCS coverage are not eligible for home and community based (HCB) waiver programs or hospice care.

(4) Noncitizens under age nineteen who are eligible for the Washington apple health for kids program under WAC 182-505-0210 are eligible for LTC services if the person is admitted to a medical institution for less than thirty days. Once the person resides or is likely to reside in a medical

institution for thirty days or more, the agency determines eligibility under WAC 182-514-0260.

(5) Noncitizens age nineteen or older may be eligible for the state-funded long-term care services program described in WAC 182-507-0125. A person must be preapproved by AL TSA for this program due to enrollment limits.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1320 Determining institutional status for long-term care (LTC) services. ~~(((1) Institutional status is an eligibility requirement for long-term care services (LTC) and institutional medical programs. To attain institutional status, you must:~~

~~(a) Be approved for and receiving home and community based waiver services or hospice services; or~~

~~(b) Reside or based on a department assessment is likely to reside in a medical institution, institution for mental diseases (IMD) or inpatient psychiatric facility for a continuous period of:~~

~~(i) Thirty days if you are an adult eighteen and older;~~

~~(ii) Thirty days if you are a child seventeen years of age or younger admitted to a medical institution; or~~

~~(iii) Ninety days if you are a child seventeen years of age or younger receiving inpatient chemical dependency or inpatient psychiatric treatment.~~

~~(2) Once the department has determined that you meet institutional status, your status is not affected by:~~

~~(a) Transfers between medical facilities; or~~

~~(b) Changes from one kind of long-term care services (waiver, hospice or medical institutional services) to another.~~

~~(3) If you are absent from the medical institution or you do not receive waiver or hospice services for at least thirty consecutive days, you lose institutional status-)) (1) To attain institutional status, a person must be approved for and receive:~~

~~(a) Home and community based (HCB) waiver services under chapter 182-515 WAC; or~~

~~(b) Roads to community living (RCL) services under WAC 182-513-1235; or~~

~~(c) Program of all-inclusive care for the elderly (PACE) under WAC 182-513-1230; or~~

~~(d) Hospice services under WAC 182-513-1240(3); or~~

~~(e) Reside, or based on a department assessment, be likely to reside in a medical institution, institution for mental diseases (IMD), or inpatient psychiatric facility for thirty consecutive days.~~

~~(2) Once the agency has determined that the person meets institutional status, the person's status is not affected if the person:~~

~~(a) Transfers between medical facilities; or~~

~~(b) Changes from one kind of long-term care services (HCB waiver, RCL, PACE, hospice or medical institutional services) to another.~~

~~(3) A person loses institutional status if he or she is absent from a medical institution, or does not receive HCB waiver, RCL, PACE, or hospice services, for more than twenty-nine consecutive days.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services (institutional, waiver or hospice). This section describes income the ((department)) agency considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

(1) Refer to WAC ((388-513-1330)) 182-513-1330 for rules related to available income for legally married couples.

(2) The ((department)) agency must apply the following rules when determining income eligibility for SSI-related LTC services:

- (a) WAC 182-512-0600 Definition of income;
- (b) WAC 182-512-0650 Available income;
- (c) WAC 182-512-0700 Income eligibility;
- (d) WAC 182-512-0750 Countable unearned income;
- (e) WAC ((182-514-0840(3))) 182-512-0840(3) Self-employment income-allowable expenses;
- (f) WAC ((388-513-1315(15))) 182-513-1315, Eligibility for long-term care (institutional, HCB waiver, and hospice) services; and
- (g) WAC ((388-450-0155, 388-450-0156, 388-450-0160)) 182-512-0785, 182-512-0790, 182-512-0795, and 182-509-0155 for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services (institutional HCB waiver and hospice). This section describes income the ((department)) agency considers available when determining a legally married client's eligibility for LTC services.

(1) The ((department)) agency must apply the following rules when determining income eligibility for LTC services:

- (a) WAC 182-512-0600, definition of income SSI-related medical;
- (b) WAC 182-512-0650, available income;
- (c) WAC 182-512-0700, income eligibility;
- (d) WAC 182-512-0750, countable unearned income;
- (e) WAC 182-512-0840(3), self-employment income-allowance expenses;
- (f) WAC 182-512-0960((;)) SSI-related medical ((clients))—Allocating income—Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS); and
- (g) WAC ((388-513-1315,)) 182-513-1315 Eligibility for long-term care (institutional, HCB waiver, and hospice) services.

(2) For an institutionalized ((client married to a community spouse who is not applying or approved for LTC services, the department)) spouse, the agency considers the following income available, unless subsection (4) applies:

- (a) Income received in the ((client's)) institutionalized spouse's name;
- (b) Income paid to a representative on the ((client's)) institutionalized spouse's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The ((department)) agency considers the following income unavailable to an institutionalized ((client)) spouse:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a court order.

(4) For the determination of eligibility only, if available income described in subsection((s)) (2)(a) through (d) of this section minus income exclusions described in WAC ((388-513-1340)) 182-513-1340, exceeds the special income level (SIL)((, then)):

(a) The ((department)) agency follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; ((and))

(c) Considers one-half of all community income available to the institutionalized ((client)) spouse; and

(d) If the total of ((subsection(4))) (c) of this subsection plus the ((client's)) institutionalized spouse's own income is over the SIL, follow subsection (2) of this section; do not determine available income using this subsection.

(5) ((The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

((6) The department)) The agency considers a stream of income, not generated by a transferred resource, available to the ((client not generated by a transferred resource available to the client)) institutionalized spouse, even when the ((client)) institutionalized spouse transfers or assigns the rights to the stream of income to:

(a) The community spouse; or

(b) A trust for the benefit of ((their)) the community spouse.

((8) The department)) (6) The agency evaluates ((the transfer of a resource described in subsection(5) according to WAC 388-513-1363, 388-513-1364, and 388-513-1365 to determine whether a penalty period of ineligibility is required)) income and resource transfers under WAC 182-513-1363.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the ((department)) agency excludes when determining a ((client's)) person's eligibility and participation in the cost of care for LTC services with the exception described in subsection (31) of this section.

(1) Crime victim's compensation;

(2) Earned income tax credit (EITC) for twelve months after the month of receipt;

(3) Native American benefits excluded by federal statute (refer to WAC ((388-450-0040)) 182-512-0700);

(4) Tax rebates or special payments excluded by other statutes;

(5) Any public agency's refund of taxes paid on real property and/or on food;

(6) Supplemental security income (SSI) and certain state public assistance based on financial need;

(7) The amount a representative payee charges to provide services when the services are a requirement for the ~~((client))~~ person to receive the income;

(8) The amount of expenses necessary for a ~~((client))~~ person to receive compensation, e.g., legal fees necessary to obtain settlement funds;

(9) ~~((Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution))~~ Education benefits described in WAC 182-509-0335;

(10) Child support payments received from an absent parent for a child living in the home are considered the income of the child;

(11) Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);

(12) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;

(13) Assistance (other than wages or salary) received under the Older Americans Act;

(14) Assistance (other than wages or salary) received under the foster grandparent program;

(15) Certain cash payments a ~~((client))~~ person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(16) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;

(17) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;

(18) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

(19) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

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

(21) Payments made under the Energy Employee Occupational Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;

(22) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

(23) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

(24) Payments made from *Susan Walker v. Bayer Corporation, et. al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

(25) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

(26) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

(27) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(28) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

(29) Interest or dividends received by the ~~((client))~~ institutionalized individual is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bonds, or savings accounts. Institutional status is defined in WAC ~~((388-513-1320))~~ 182-513-1320;

(30) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible ~~((client))~~ person, e.g., chore services;

(31) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (32) of this section;

(32) Benefits described in subsection (31)(b) of this section for a ~~((client))~~ person who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the ~~((client))~~ institutionalized individual contributes in the cost of care.

(33) Any other income excluded by federal law.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program. This section describes income the ~~((department))~~ agency disregards when determining a ~~((client's))~~ person's eligibility for institutional or hospice services under the MN program. The ~~((department))~~ agency considers disregarded income available when determining a ~~((client's))~~ person's participation in the cost of care.

(1) The ~~((department))~~ agency disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income, unless the income paid to a ~~((client))~~ person is:

(i) Based on need; and

(ii) Totally or partially funded by the federal government or a private agency.

(2) For a ~~((client))~~ person who is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1), the first sixty-five dollars per month of

earned income not excluded under WAC ((388-513-1340)) 182-513-1340, plus one-half of the remainder.

(3) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (4) of this section.

(4) Benefits described in subsection (3)(b) of this section for a ((client)) person who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the ((client)) person contributes in the cost of care.

(5) Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services. ((This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (9) through (12) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (4) of this section applies.

(2) Effective January 1, 2012 if an individual purchases a qualified long-term care partnership policy approved by the Washington insurance commissioner under the Washington long-term care partnership program, the department allows the individual with the long-term care partnership policy to retain a higher resource amount based on the dollar amount paid out by a partnership policy. This is described in WAC 388-513-1400.

(3) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(4) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(5) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eli-

gibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(6) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(7) The department applies the following rules when determining available resources for LTC services:

(a) WAC 182-512-0300, Resource eligibility;

(b) WAC 182-512-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060, Resources of an alien's sponsor.

(8) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 182-512-0350 through 182-512-0550 and resources excluded by federal law with the exception of:

(i) WAC 182-512-0550 pension funds owned by an:

(I) Ineligible spouse. Pension funds are defined as funds held in an individual retirement account (IRA) as described by the IRS code; or

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

(ii) WAC 182-512-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index urban (CPIU). For current excess home equity standard starting January 1, 2011 and each year thereafter, see <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandards.pna.shtml>.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (3), (6) and (9)(a) or (b) apply, but not if subsection (4) or (5) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the facility that the client owes the expense to.

(ii) As long as the incurred medical expenses:

(A) Were not incurred more than three months before the month of the medicaid application;

(B) Are not subject to third party payment or reimbursement;

(C) Have not been used to satisfy a previous spend down liability;

(D) Have not previously been used to reduce excess resources;

(E) Have not been used to reduce client responsibility toward cost of care;

(F) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, and 388-513-1365; and

(G) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or assisted living facility is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to countable income, the combined total is less than the:

(A) State medical institution rate based on the number of days in the medical institution in the month, plus the amount of recurring medical expenses; or

(B) State hospice rate based on the number of days in the medical institution in the month plus the amount of recurring medical expenses, in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(9) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(10) If subsection (9)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard may change annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long term care standards at <http://www1.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the first day of the month of the current period of institutional status, up to the amount described in subsection (10)(a) of this section; or

(ii) The state spousal resource standard of forty-eight thousand six hundred thirty-nine dollars (this standard may change every odd year on July 1st). This standard is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long term care standards at <http://www1.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>.

(c) Resources are verified on the first moment of the first day of the month institutionalization began as described in WAC 182-512-0300(1).

(11) The amount of the spousal share described in (10)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spou-

sal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(12) The amount of allocated resources described in subsection (10) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(13) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (6) or (14)(a), (b), or (c) of this section applies.

(14) A redetermination of the couple's resources as described in subsection (8) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status; or

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (9)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (10) or (12) to the community spouse by either:

(i) The end of the month of the first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.) (1) General information.

(a) This section describes how the agency defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related LTC services.

(b) The agency uses the term "resource standard" to describe the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not related to SSI, the agency applies the program specific resource rules to determine eligibility.

(d) Institutional resource standards are found at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(2) Resource standards.

(a) The resource standard for the following people is two thousand dollars:

(i) A single person; or

(ii) A legally married institutionalized spouse. (Determine the amount of resources allocated to the community spouse under WAC 182-513-1355.)

(b) The resource standard for a legally married couple is three thousand dollars, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400

may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the agency considers the resources of both spouses available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard described in subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for a couple.

(iv) The agency considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized person marries, the agency redetermines eligibility applying the rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, if WAC 182-513-1355 (1)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (2) or (4), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency determines countable resources using the following sections:

(i) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(ii) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(iii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(iv) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(b) The agency determines excluded resources based on federal law and WAC 182-512-0550 SSI-related medical—All other excluded resources, with the following exceptions:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) WAC 182-512-0350 (1)(b), one home. For long-term services and supports (LTSS), one home is excluded only if it meets the home equity limits of subsection (8) of this section.

(c) The agency adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce resources over the standard by allowing deductions for incurred medical expenses as described in subsection (6) of this section:

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross nonexcluded income must be at or below the special income level (SIL).

(B) In a medical institution, excess resources and gross nonexcluded income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(6) Allowable medical expenses.

(a) The following incurred medical expenses are allowed to reduce excess resources:

(i) Premiums, deductibles, and coinsurance or copayment charges for health insurance and medicare;

(ii) Medically necessary care recognized under state law, but not covered under the state's medicaid plan;

(iii) Medically necessary care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that is owed the expense.

(b) To be allowed, the medical expense must meet the following criteria. The expense:

(i) Was not incurred more than three months before the month of the medicaid application;

(ii) Is not subject to third-party payment or reimbursement;

(iii) Has not been used to satisfy a previous spenddown liability;

(iv) Has not previously been used to reduce excess resources;

(v) Has not been used to reduce participation;

(vi) Was not incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Is an amount for which the person remains liable.

(7) Nonallowable medical expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid expenses prior to HCB waiver eligibility to an adult family home (AFH) or assisted living facility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in his or her primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) unless one of the following persons lawfully resides in the home:

(i) The applicant's spouse; or

(ii) A blind, disabled, or dependent child under age twenty-one.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) A person's equity interest equals the fair market value of the home minus encumbrances.

(d) Effective January 1, 2015, the excess home equity limit is five hundred fifty-two thousand dollars. On January 1, 2016, and on January 1 of each year thereafter, this standard may change by the percentage in the consumer price index-urban (CPIU).

(e) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

NEW SECTION

WAC 182-513-1355 Determining the amount of resources allocated to the community spouse when determining resource eligibility for long-term services and supports (LTSS) under WAC 182-513-1350. (1) For legally married people when only one spouse meets institutional status, the following rules apply. If the person's current period of institutional status began:

(a) Before October 1, 1989, the agency adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; and

(ii) Both spouses.

(b) On or after October 1, 1989, the agency adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; and

(ii) Both spouses.

(2) If subsection (1)(b) of this section applies, the agency determines the amount of resources allocated to the community spouse, before determining countable resources used to establish eligibility for the institutionalized spouse under WAC 182-513-1350, as follows:

(a) If the person's current period of institutional status began on or after October 1, 1989, and before August 1,

2003, the agency allocates the maximum amount of resources ordinarily allowed by law; or

(b) If the person's current period of institutional status began on or after August 1, 2003, the agency allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the first day of the month of the current period of institutional status, up to the amount described in subsection (2)(a) of this section; or

(ii) The state spousal resource standard.

(c) Resources are verified on the first moment of the first day of the month institutionalization began under WAC 182-512-0300(1).

(3) The amount of the spousal share described in subsection (2)(b)(i) of this section can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTSS is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTSS, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTSS if the person was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The person is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(4) The amount of allocated resources described in subsection (2) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in an administrative hearing under chapter 182-526 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(5) The institutionalized spouse has until the end of the month of the first regularly scheduled eligibility review to transfer joint resources in excess of two thousand dollars to his or her community spouse

(6) Standards in this section are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1363 Evaluating the transfer of assets ((on or after May 1, 2006 for persons)) for people applying for or receiving long-term care (LTC) services. ((This section describes how the department evaluates asset transfers made on or after May 1, 2006 and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institu-

tion equivalent to nursing facility services, and home and community-based services furnished under a waiver program. Program of all inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period-

• Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006-

• Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003-

(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006 on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period-

(2) The department does not apply a penalty period to transfers meeting the following conditions-

(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month-

(b) The transfer is an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d)-

(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following-

(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.

(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer-

(iii) All assets transferred for less than fair market value have been returned to the client-

(iv) The denial of eligibility would result in an undue hardship as described in WAC 388-513-1367-

(d) The transfer of ownership of the client's home, if it is transferred to the client's-

(i) Spouse; or

(ii) Child, who-

(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (e); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided verifiable care that enabled the individual to remain in the home. A physician's statement of needed care is required; or

(iii) Brother or sister, who has-

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status-

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (2)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(e) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty

period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (5) through (7).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services:

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g. the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

~~(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty;~~

~~(b) RCW 74.08.338 Real property transfers for inadequate consideration;~~

~~(c) RCW 74.08.335 Transfers of property to qualify for assistance; and~~

~~(d) RCW 74.39A.160 Transfer of assets—Penalties;))~~

(1) When determining a person's eligibility for long-term care (LTC) services, the agency must evaluate the effect of an asset transfer made within the sixty-month period before the month that the person:

(a) Attained institutional status, or would have attained institutional status; and

(b) Has applied for LTC services.

(2) The agency must evaluate all transfers for recipients of LTC services made on or after the month the recipient attained institutional status.

(3) The agency establishes a period of ineligibility during which the person is not eligible for LTC services if the person, the person's spouse, or someone acting on behalf of either:

(a) Transfers an asset within the time period described in subsection (1) or (2) of this section; and

(b) Does not receive adequate compensation for the asset, unless the transfer meets one of the conditions in subsection (4)(a) through (g) of this section.

(4) The agency does not apply a period of ineligibility because of an uncompensated transfer if:

(a) The total of all transfers in a month does not exceed the average daily private nursing facility rate in that month;

(b) The transfer is an excluded resource under WAC 182-513-1350 with the exception of a home, unless the transfer of the home meets the conditions described in (d) of this subsection;

(c) The asset is transferred for less than fair market value (FMV), and the person can establish one of the following:

(i) An intent to transfer the asset at FMV. To establish such an intent, the agency must be provided with convincing evidence of the attempt to dispose of the asset for FMV;

(ii) The transfer is not made to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery. Convincing evidence must be presented regarding the specific purpose of the transfer;

(iii) All assets transferred for less than FMV have been returned to the person or his or her spouse;

(iv) The denial of eligibility would result in an undue hardship under WAC 182-513-1367;

(d) The asset transferred is a home, if the home is transferred to the person's:

(i) Spouse;

(ii) Child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iii) Child who is less than age twenty-one; or

(iv) Child who lived in the home and provided care, if:

(A) The child lived in the person's home for at least two years;

(B) The child provided verifiable care during the time period in (d)(iv)(A) of this subsection for at least two years;

(C) The period of care described in (d)(iv)(B) of this subsection is immediately before the person's current period of institutional status;

(D) The care was not paid for by medicaid;

(E) The care enabled the person to remain in his or her home; and

(F) The person provided physician's documentation that the in-home care was necessary to prevent the person's current period of institutional status; or

(v) Sibling, who has lived in and has had an equity interest in the home for at least one year immediately before the date the person became an institutionalized individual.

(e) The asset is transferred to the person's spouse; or to the person's child, if the child meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(f) The transfer is to a family member prior to the current period of institutional status, and all the following conditions are met. If all the following conditions are not met, the transfer is an uncompensated transfer:

(i) The transfer is in exchange for care services the family member provided to the person;

(ii) The person had a documented need for the care services provided by the family member;

(iii) The care services provided by the family member are allowed under the medicaid state plan or the department's home and community based waiver services;

(iv) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(v) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(vi) The time for which care services are claimed is reasonable based on the kind of services provided; and

(vii) The assets were transferred as the care services were performed, or with no more time delay than one month between the provision of the service and the transfer.

(g) The transfer meets the conditions described in subsection (5) of this section, and the asset is transferred:

(i) To another party for the sole benefit of the person's spouse;

(ii) From the person's spouse to another party for the sole benefit of the spouse;

(iii) To a trust established for the sole benefit of the person's child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is age sixty-four or younger who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c).

(5) The agency determines the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (4)(g) of this section, if the transfer or trust is established by a legal document that makes the transfer irrevocable, and the document:

(a) Provides that only the person's spouse, blind or disabled child, or another disabled person can benefit from the assets transferred; and

(b) Provides for spending all assets involved for the sole benefit of the person who is actuarially sound, based on the life expectancy of that person or the term of the document, whichever is less, unless the document is a trust that meets

the conditions under WAC 182-516-0100 (6)(a), (b), (7)(a), or (b).

(6) The period of ineligibility described in subsection (3) of this section is calculated by:

(a) Adding together the total uncompensated value of all transfers under subsection (3) of this section; and

(b) Dividing the total in (a) of this subsection by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility;

(7) The period of ineligibility calculated in subsection (6) of this section begins:

(a) For a LTC services applicant: The date the person would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended; or

(b) For a LTC services recipient: The first of the month following ten-day advance notice of the period of ineligibility, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous period of ineligibility has ended; and

(8) The period of ineligibility ends after the number of whole days, calculated in subsection (6) of this section, elapse from the date the period of ineligibility began in subsection (7) of this section.

(9) If the transfer is to the person's spouse, and it includes the right to receive an income stream, the agency determines availability of the income stream under WAC 182-513-1330 (5) and (6).

(10) If the transfer of an asset for which adequate compensation is not received is made to someone other than the person's spouse and includes the right to receive a stream of income not generated by the transferred asset, the length of the period of ineligibility is calculated and applied in the following way:

(a) The amount of reasonably anticipated future monthly income, after the transfer, is multiplied by the actuarial life expectancy (in months) of the person who owned the income. The actuarial life expectancy is based on age of the person in the month the transfer occurs;

(b) The amount in (a) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility; and

(c) The period of ineligibility will begin under subsection (7) of this section and end under subsection (8) of this section.

(11) A period of ineligibility for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses have attained institutional status. When both spouses are institutionalized, the agency divides the penalty equally between the two spouses. If one spouse is no longer subject to a period of ineligibility, the remaining period of ineligibility that applied to both spouses will be applied to the other spouse.

(12) If a person or his or her spouse disagrees with the determination or application of a period of ineligibility, that person may request a hearing under chapter 182-526 WAC.

(13) Additional statutes that apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1367 Hardship waivers for long-term care (LTC) services. ((Clients)) People who are denied or terminated from LTC services due to a transfer of asset penalty (described in WAC ((388-513-1363, 388-513-1364 and 388-513-1365)) 182-513-1363), or having excess home equity (described in WAC ((388-513-1350)) 182-513-1350) may apply for an undue hardship waiver. Notice of the right to apply for an undue hardship waiver will be given whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

- Defines undue hardship;
- Specifies the approval criteria for an undue hardship request;
- Establishes the process the department follows for determining undue hardship; and
- Establishes the appeal process for a client whose request for an undue hardship is denied.

(1) When does undue hardship exist?

(a) Undue hardship may exist:

(i) When a transfer of an asset occurs between:

(A) Registered domestic partners as described in chapter 26.60 RCW; or

(B) Same-sex couples who were married in states and the District of Columbia where same-sex marriages are legal; and

(C) The transfer would not have caused a period of ineligibility if made between an opposite sex married couple under WAC ((388-513-1363)) 182-513-1363.

(ii) When a ((client)) person who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian or attorney-in-fact, has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period; and

(iii) The ((client)) person provides sufficient documentation to support their efforts to recover the assets or income; or

(iv) The ((client)) person is unable to access home equity in excess of the standard described in WAC ((388-513-1350)) 182-513-1350; and

(v) When, without LTC benefits, the ((client)) person is unable to obtain:

(A) Medical care to the extent that his or her health or life is endangered; or

(B) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.

(2) Undue hardship does not exist:

(a) When the transfer of asset penalty period or excess home equity provision inconveniences a client or restricts their lifestyle but does not seriously deprive him or her as defined in subsection (1)(a)(iii) of this section;

(b) When the resource is transferred to a person who is handling the financial affairs of the ~~((client))~~ person; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the ~~((client))~~ person.

~~((4))~~ (3) Undue hardship may exist under subsection (2)(b) and (c) of this section if DSHS has found evidence of financial exploitation.

~~((3))~~ (4) How is an undue hardship waiver requested?

(a) An undue hardship waiver may be requested by:

(i) The ~~((client))~~ person;

(ii) The ~~((client's))~~ person's spouse;

(iii) The ~~((client's))~~ person's authorized representative;

(iv) The ~~((client's))~~ person's power of attorney; or

(v) With the consent of the ~~((client or their))~~ person or his or her guardian, a medical institution, as defined in WAC ~~((182-500-0005))~~ 182-500-0050, in which an institutionalized ~~((client))~~ person resides.

(b) Request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a ~~((client))~~ person, then the ~~((client's))~~ person's name, address and telephone number must be included;

(iv) Be made within thirty days of the date of denial or termination of LTC services; and

(v) Returned to the originating address on the denial/termination letter.

~~((4))~~ (5) What if additional information is needed to determine a hardship waiver? ~~((a))~~ A written notice to the ~~((client))~~ person is sent requesting additional information within fifteen days of the request for an undue hardship waiver. Additional time to provide the information can be requested by the ~~((client))~~ person.

~~((5))~~ (6) What happens if my hardship waiver is approved?

(a) The ~~((department))~~ agency sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.

(b) Any changes in a ~~((client's))~~ person's situation that led to the approval of a hardship must be reported to the ~~((department by the tenth of the month following))~~ agency within thirty days of the change per WAC ~~((388-418-0007))~~ 182-504-0110.

~~((6))~~ (7) What happens if my hardship waiver is denied?

(a) The ~~((department))~~ agency sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.

(b) The denial notice will have instructions on how to request an administrative hearing. The ~~((department))~~ agency must receive an administrative hearing request within ninety days of the date of the adverse action or denial.

~~((7))~~ (8) What statute or rules govern administrative hearings? ~~((a))~~ An administrative hearing held under this section is governed by chapters 34.05 RCW and ~~((chapter 388-02))~~ 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision in this section governs.

~~((8))~~ (9) Can the ~~((department))~~ agency revoke an approved undue hardship waiver? ~~((a))~~ The ~~((department))~~ agency may revoke approval of an undue hardship waiver if any of the following occur:

~~((i))~~ (a) A ~~((client))~~ person, or his or her authorized representative, fails to provide timely information and/or resource verifications as it applies to the hardship waiver when requested by the ~~((department))~~ agency per WAC ~~((388-490-0005 and 388-418-0007))~~ 182-503-0050 and 182-504-0120 or 182-504-0125;

~~((ii))~~ (b) The lien or legal impediment that restricted access to home equity in excess of five hundred thousand dollars is removed; or

~~((iii))~~ (c) Circumstances for which the undue hardship was approved have changed.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1380 Determining a ~~((client's))~~ person's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the ~~((department))~~ agency allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The ~~((department))~~ agency applies rules described in WAC ~~((388-513-1315))~~ 182-513-1315 to define which income and resources must be used in this process.

(1) For a ~~((client))~~ person receiving institutional or hospice services in a medical institution, the ~~((department))~~ agency applies all subsections of this rule.

(2) For a ~~((client))~~ person receiving waiver services at home or in an alternate living facility, the ~~((department))~~ agency applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a ~~((client))~~ person receiving hospice services at home, or in an alternate living facility, the ~~((department))~~ agency applies rules used for the community options program entry system (COPEs) for hospice applicants with gross income under the medicaid special income level (SIL) (three hundred percent of the federal benefit rate (FBR)), if the ~~((client))~~ person is not otherwise eligible for another noninstitutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The ~~((department))~~ agency allocates nonexcluded income in the following order and the combined total of ~~((4))~~ (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following ~~((clients))~~ people who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in ~~((subsection (4)))~~ (a)(i) of this ~~((section))~~ subsection who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a ~~((client))~~ person living in a state veterans' home who does not receive a needs based veteran's pension;

(iv) Forty-one dollars and sixty-two cents for all ~~((clients))~~ people in a medical institution receiving aged, blind, disabled, (ABD) or temporary assistance for needy families (TANF) cash assistance.

(v) For all other ~~((clients))~~ people in a medical institution the PNA is fifty-seven dollars and twenty-eight cents.

(vi) Current PNA and long-term care standards can be found at ~~((http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

(b) Mandatory federal, state, or local income taxes owed by the ~~((client))~~ person.

(c) Wages for a ~~((client))~~ person who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1); and

(ii) Receives the wages as part of ~~((a department approved))~~ an agency-approved training or rehabilitative program designed to prepare the ~~((client))~~ person for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The ~~((department))~~ agency allocates nonexcluded income after deducting amounts described in subsection (4) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is for the current month:

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance may change each January based on the consumer price index. Starting January 1, 2008, and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at ~~((http://www1.dshs.wa.gov/manuals/caz/~~

~~sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two-person federal poverty level. This standard may change annually on July 1st; and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the ~~((client's))~~ person's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse: ~~((A))~~ For each child, one hundred and fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income). This standard is called the community spouse (CS) and family maintenance standard and can be found at: ~~((http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the effective one-person MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the ~~((institutional client))~~ institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC ~~((388-513-1350))~~ 182-513-1350.

(e) Maintenance of the home of a single institutionalized ~~((client))~~ person or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) ~~((For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:~~

~~((a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and is found at: http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml; and~~

~~((b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:~~

~~((i) Rent;~~

~~((ii) Mortgage;~~

~~((iii) Taxes and insurance;~~

~~(iv) Any maintenance care for a condominium or cooperative; and~~

~~(v) The food stamp standard utility allowance described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.~~

~~(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:~~

~~(a) A court enters an order against the client for the support of the community spouse; or~~

~~(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.~~

~~(8)) A ((client)) person who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.~~

(7) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the participation.

(8) A person is only responsible to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person only participates the difference up to the state rate cost of care.

(9) Standards described in this section for long-term care can be found at: (~~<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>~~) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

NEW SECTION

WAC 182-513-1385 Determining the spousal and dependent allocation allowed in post-eligibility treatment of income for Washington apple health long-term care (LTC) programs. (1) This section describes the calculation to determine the monthly maintenance-needs allowance in post-eligibility treatment of income for long-term care (LTC) programs for a community spouse or dependents of the institutionalized individual.

(2) The community spouse maintenance-needs allowance is found in the institutional section of the Washington apple health income and resource standards chart located at <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx> unless a greater amount is allocated as described in subsection (4) of this section. The allowance may change each January based on the consumer price index.

(3) The community spouse maintenance-needs allowance:

(a) Is allowed only to the extent that the institutionalized spouse's income is made available to the community spouse; and

(b) Consists of a combined total of both:

(i) One hundred fifty percent of the two-person federal poverty level (FPL). (This standard may change annually on July 1st); and

(ii) Excess shelter expenses. Excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. To determine this amount:

(A) Add:

(I) Rent, including space rent for mobile homes;

(II) Mortgage;

(III) Real property taxes;

(IV) Homeowner's insurance;

(V) Required maintenance fees for a condominium, cooperative, or homeowner's association that are recorded in a covenant;

(VI) The food assistance standard utility allowance (SUA) under WAC 388-450-0195 minus the cost of any utilities that are included in (b)(ii)(A)(V) of this subsection.

(B) Subtract the standard shelter allocation from the total in (b)(ii)(A) of this subsection. The standard shelter allocation is thirty percent of one hundred fifty percent of the two-person FPL. This standard may change annually on July 1st.

(c) The total of (b) of this subsection is reduced by the community spouse's gross countable income.

(4) The amount allocated to the community spouse may be greater than the amount determined in subsection (3) of this section only if:

(a) There is a court order approving a higher amount for the support of the community spouse; or

(b) An administrative law judge determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(5) The agency determines monthly maintenance-needs allowance for dependents of the institutionalized individual or his or her spouse. The amount the agency allows depends on whether the dependent resides with the community spouse.

(a) For each dependent who resides with the community spouse:

(i) Subtract the dependent's income from one hundred fifty percent of the two-person FPL;

(ii) Divide the amount determined in (a)(i) of this subsection by three;

(iii) The remainder is the amount that can be allocated to the dependent.

(b) For each dependent who does not reside with the community spouse:

(i) The agency determines the effective MNIL standard based on the number of dependent family members in the home;

(ii) Subtracts the dependent's separate income;

(iii) The difference is the amount that can be allocated to the dependents.

(c) Child support received from a noncustodial parent is considered the child's income.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1395 Determining eligibility for institutional ((or hospice)) services for ((individuals)) people living in ((a)) medical institutions under the SSI-related medically needy ((MN)) program. ((This section describes how the department determines a client's eligibility for institutional or hospice services in a medical institution and for facility care only under the MN program. In addition, this section describes rules used by the department to deter-

mine whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5). In addition, a client must meet program requirements described in WAC 388-513-1315; and

(a) Be an SSI-related client with countable income as described in subsection (4)(a) that is more than the special income level (SIL); or

(b) Be a child not described in subsection (1)(a) with countable income as described in subsection (4)(b) that exceeds the categorically needy (CN) standard for the children's medical program.

(2) For an SSI-related client, excess resources are reduced by medical expenses as described in WAC 388-513-1350 to the resource standard for a single or married individual.

(3) The department determines a client's countable resources for institutional and hospice services under the MN programs as follows:

(a) For an SSI-related client, the department determines countable resources per WAC 388-513-1350.

(b) For a child not described in subsection (3)(a), no determination of resource eligibility is required.

(4) The department determines a client's countable income for institutional and hospice services under the MN program as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC 388-513-1325 and 388-513-1330 by:

(i) Excluding income described in WAC 388-513-1340;

(ii) Disregarding income described in WAC 388-513-1345; and

(iii) Subtracting previously incurred medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(b) For a child not described in subsection (4)(a), the department:

(i) Follows the income rules described in WAC 182-505-0210 for the children's medical program; and

(ii) Subtracts the medical expenses described in subsection (4).

(5) If the income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 (1), is less than the department contracted rate times the number of days residing in the facility the client:

(a) Is eligible for institutional or hospice services in a medical institution, and medical assistance;

(b) Is approved for twelve months; and

(c) Participates income and excess resources toward the cost of care as described in WAC 388-513-1380.

(6) If the income remaining after the allowed deductions described in WAC 388-513-1380 plus countable resources in excess of the standard described in WAC 388-513-1350(1) is more than the department contracted rate times the number of days residing in the facility the client:

(a) Is not eligible for payment of institutional services; and

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.

(7) If the income remaining after the allowed deductions described in WAC 388-513-1380 is more than the department contracted nursing facility rate based on the number of days the client is in the facility, but less than the private nursing rate plus the amount of medical expenses not used to reduce excess resources the client:

(a) Is eligible for nursing facility care only and is approved for a three or six month based period as described in chapter 182-519 WAC. This does not include hospice in a nursing facility; and

(i) Pays the nursing home at the current state rate;

(ii) Participates in the cost of care as described in WAC 388-513-1380; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in (6)(b) is met.

(b) Is approved for medical assistance for a three or six month base period as described in chapter 182-519 WAC, if:

(i) No income and resources remain after the post eligibility treatment of income process described in WAC 388-513-1380.

(ii) Medicaid certification is approved beginning with the first day of the base period.

(c) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income remaining after the post eligibility treatment of income process described in WAC 388-513-1380.

(i) This process is known as spenddown and is described in WAC 182-519-0100.

(ii) Medicaid certification is approved on the day the spenddown is met.

(8) If the income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 is more than the private nursing facility rate times the number of days in a month residing in the facility, the client:

(a) Is not eligible for payment of institutional services.

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.) (1) General information. To be eligible for institutional services when living in a medical institution under the SSI-related medically needy (MN) program, a person must:

(a) Meet program requirements described in WAC 182-513-1315;

(b) Have gross nonexcluded income in excess of the special income level (SIL); and

(c) Meet the financial requirements of subsection (3) or (4) of this section.

(2) Financial eligibility information.

(a) The agency determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.

(b) The agency determines a person's countable income by:

(i) Excluding income described in WAC 182-513-1340;

(ii) Determining available income described in WAC 182-513-1325 or 182-513-1330;

(iii) Disregarding income described in WAC 182-513-1345; and

(iv) Deducting medical expenses that were not used to reduce excess resources described in WAC 182-513-1350.

(c) For the purposes of this section only, "remaining income" means all gross nonexcluded income remaining after the post-eligibility calculation described in WAC 182-513-1380.

(3) Eligibility for payment of institutional services and the MN program.

(a) If a person's remaining income plus excess resources is less than, or equal to, the department-contracted daily rate times the number of days residing in the facility, the person:

(i) Is eligible for payment of institutional services and the MN program; and

(ii) Is approved for a twelve-month certification period.

(b) The person must pay income and excess resources towards the cost of care as described in WAC 182-513-1380.

(4) Eligibility for payment of institutional services and MN spenddown. If a person's remaining income is more than the department contracted daily rate times the number of days residing in the facility, but less than the private nursing facility rate for the same period, the person:

(a) Is eligible for payment of institutional services at the department-contracted rate; and

(i) Is approved for a three- or six-month base period;

(ii) Pays income and excess resources towards the department-contracted cost of care as described in WAC 182-513-1380; and

(b) Is eligible for the MN program for the same three- or six-month base period when the total of additional medical expenses incurred during the base period exceeds:

(i) The total remaining income for all months of the base period; minus

(ii) The total department-contracted rate for all months of the base period.

(5) If a person has excess resources and his or her remaining income is more than the department-contracted daily rate times the number of days residing in the facility, the person is not eligible for payment of institutional services and the MN program.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1400 Long-term care (LTC) partnership program (index). Under the long-term care (LTC) partnership program, ~~((individuals))~~ **people** who purchase qualified long-term care partnership insurance policies can apply for long-term care medicaid under special rules for determining financial eligibility. These special rules generally allow the ~~((individual))~~ **person** to protect assets up to the insurance benefits received from a partnership policy so that such assets will not be taken into account in determining financial eligibility for long-term care medicaid and will not subsequently be subject to estate recovery for medicaid and long-term care services paid. The Washington long-term care partnership program is effective on December 1, 2011.

The following rules govern long-term care eligibility under the long-term care partnership program:

(1) WAC ~~((388-513-1405))~~ 182-513-1405 Definitions.

(2) WAC ~~((388-513-1410))~~ 182-513-1410 What qualifies as a LTC partnership policy?

(3) WAC ~~((388-513-1415))~~ 182-513-1415 What assets can't be protected under the LTC partnership provisions?

(4) WAC ~~((388-513-1420))~~ 182-513-1420 Who is eligible for asset protection under a LTC partnership policy?

(5) WAC ~~((388-513-1425))~~ 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy that does not have exhausted benefits?

(6) WAC ~~((388-513-1430))~~ 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?

(7) WAC ~~((388-513-1435))~~ 182-513-1435 Will Washington recognize a LTC partnership policy purchased in another state?

(8) WAC ~~((388-513-1440))~~ 182-513-1440 How many of my assets can be protected?

(9) WAC ~~((388-513-1445))~~ 182-513-1445 How do I designate a protected asset and what proof is required?

(10) WAC ~~((388-513-1450))~~ 182-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?

(11) WAC ~~((388-513-1455))~~ 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1405 Definitions. For purposes of this section, the following terms have the meanings given them. Additional definitions can be found at chapter ~~((388-500))~~ 182-500 WAC and WAC ~~((388-513-1304))~~ 182-513-1100.

"Issuer" means any entity that delivers, issues for delivery, or provides coverage to, a resident of Washington, any policy that claims to provide asset protection under the Washington long-term care partnership act, chapter 48.85 RCW. Issuer as used in this chapter specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

"Long-term care (LTC) insurance" means a policy described in Chapter 284-83 WAC.

"Long-term care services" means services received in a medical institution, or under a home and community based waiver authorized by home and community services ~~((HCS))~~ (HCS) or ~~((division of))~~ (DDA) developmental disabilities ~~((administration))~~ (DDA). Hospice services are considered long-term care services for the purposes of the long-term care partnership when medicaid eligibility is determined under chapter ~~((388-513-0388-515))~~ 182-513 or 182-515 WAC.

"Protected assets" means assets that are designated as excluded or not taken into account upon determination of long-term care medicaid eligibility described in WAC ~~((388-513-1315))~~ 182-513-1315. The protected or excluded amount is up to the dollar amount of benefits that have been paid for long-term care services by the qualifying long-term care partnership policy on the medicaid applicant's or client's behalf.

The assets are also protected or excluded for the purposes of estate recovery described in chapter ((388-527)) 182-527 WAC, in up to the amount of benefits paid by the qualifying policy for medical and long-term care services.

"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid Services (CMS), and the health care authority (HCA) which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(c)(iii) of the act. These policies are described in chapter 284-83 WAC.

"Reciprocity Agreement" means an agreement between states approved under section 6021(b) of the Deficit Reduction Act of 2005, Public Law 109-171 (DRA) under which the states agree to provide the same asset protections for qualified partnership policies purchased by an individual while residing in another state and that state has a reciprocity agreement with the state of Washington.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1415 What assets can't be protected under the LTC partnership provisions? The following assets cannot be protected under a LTC partnership policy.

(1) Resources in a trust described in WAC ((388-561-0100)) 182-516-0100 (6) and (7).

(2) Annuity interests in which Washington must be named as a preferred remainder beneficiary as described in WAC ((388-561-0201)) 182-516-0201.

(3) Home equity in excess of the standard described in WAC ((388-513-1350)) 182-513-1350. Individuals who have excess home equity interest are not eligible for long-term care medicaid services.

(4) Any portion of the value of an asset that exceeds the dollar amount paid out by the LTC partnership policy.

(5) The unprotected value of any partially protected asset (an example would be the home) is subject to estate recovery described in chapter ((388-527)) 182-527 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy in pay status? You are not eligible for LTC medicaid when the following applies:

(1) The income you have available to pay toward your cost of care described in WAC ((388-513-1380)) 182-513-1380, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate at the institution.

(2) The income you have available to pay toward your cost of care on a home and community based (HCB) waiver described in chapter ((388-515)) 182-515 WAC, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate in a home or residential setting.

(3) You fail to meet another applicable eligibility requirement for LTC medicaid.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care? You must report changes described in WAC ((388-418-0005)) 182-504-0105 plus the following:

(1) You must report and verify the value of the benefits that your issuer has paid on your behalf under the LTC partnership policy upon request by the ((department)) agency, and at each annual eligibility review.

(2) You must provide proof when you have exhausted the benefits under your LTC partnership policy.

(3) You must provide proof if you have given away or transferred assets that you have previously designated as protected. Although, there is no penalty for the transfer of protected assets once you have been approved for LTC medicaid, the value of transferred assets reduces the total dollar amount that is designated as protected and must be verified.

(4) You must provide proof if you have sold an asset or converted a protected asset into cash or another type of asset. You will need to make changes in the asset designation and verify the type of transaction and new value of the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1445 How do I designate a protected asset and what proof is required? (1) Complete a DSHS LTCP asset designation form listing assets and the full fair market value that are earmarked as protected at the time of initial application for LTC medicaid.

(a) The full fair market value (FMV) of real property or interests in real property will be based on the current assessed value for property tax purposes for real property. A professional appraisal by a licensed appraiser can establish the current value if the assessed value is disputed.

(b) The value of a life estate in real property is determined using the life estate tables found in: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCOAppendix2.shtml>)) <http://www.hca.wa.gov/medicaid/manual/Pages/65-310.aspx>.

(c) If you own an asset with others, you can designate the value of your ((pro-rata)) pro rata equity share.

(d) If the dollar amount of the benefits paid under a LTCP policy is greater than the fair market value of all assets protected at the time of the application for long-term care medicaid you may designate additional assets for protection under this section. The DSHS LTCP asset designation form must be submitted with the updated assets indicated along with proof of the current value of designated assets.

(e) The value of your assets protected for you under your LTC partnership policy do not carry over to your spouse should they need medicaid long-term care services during your lifetime or after your death. If your surviving spouse has their own LTC partnership policy he or she may designate

assets based on the dollar amount paid under his or her own policy.

(f) Assets designated as protected under this subsection will not be subject to transfer penalties described in WAC ~~((388-513-1363))~~ 182-513-1363.

(2) Proof of the current fair market value of all protected assets is required at the initial application and each annual review.

(3) Submit current verification from the issuer of the LTCP policy of the current dollar value paid toward long-term care benefits. This verification is required at application and each annual eligibility review.

(4) Any individual or the personal representative of the individual's estate who asserts that an asset is protected has the initial burden of:

(a) Documenting and proving by clear and convincing evidence that the asset or source of funds for the asset in question was designated as protected;

(b) Demonstrating the value of the asset and the proceeds of the asset beginning from the time period the LTC partnership has paid out benefits to the present; and

(c) Documenting that the asset or proceeds of the asset remained protected at all times.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility? (1) If you transfer an asset within the sixty months prior to the medicaid application or after medicaid eligibility has been established, we will evaluate the transfer based on WAC ~~((388-513-1363))~~ 182-513-1363 and determine if a penalty period applies unless:

(a) You have already been receiving institutional services;

(b) Your LTC partnership policy has paid toward institutional services for you; and

(c) The value of the transferred assets has been protected under the LTC partnership policy.

(2) The value of the transferred assets that exceed your LTC partnership protection will be evaluated for a transfer penalty.

(3) If you transfer assets whose values are protected, you lose that value as future protection unless all the transferred assets are returned.

(4) The value of your protected assets less the value of transferred assets equals the adjusted value of the assets you are able to protect.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death? Assets designated as protected prior to death are not subject to estate recovery for medical or LTC services paid on your behalf as described in chapter ~~((388-527))~~ 182-527 WAC as long as the following requirements are met:

(1) A personal representative who asserts an asset is protected under this section has the initial burden of providing proof as described in chapter ~~((388-527))~~ 182-527 WAC.

(2) A personal representative must provide verification from the LTC insurance company of the dollar amount paid out by the LTC partnership policy.

(3) If the LTC partnership policy paid out more than was previously designated, the personal representative has the right to assert that additional assets should be protected based on the increased protection. The personal representative must use the DSHS LTCP asset designation form and send it to the office of financial recovery.

(4) The amount of protection available to you at death through the estate recovery process is decreased by the FMV of any protected assets that were transferred prior to death.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-513-1300 Payment standard for persons in medical institutions.

WAC 182-513-1301 Definitions related to long-term care (LTC) services.

WAC 182-513-1305 Determining eligibility for noninstitutional medical assistance in an alternate living facility (ALF).

WAC 182-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services.

WAC 182-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 and before April 1, 2003 for long-term care (LTC) services.

WAC 182-513-1366 Evaluating the transfer of an asset made before March 1, 1997 for long-term care (LTC) services.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1505 ~~((Long-term care home and community-based services authorized by home and community services (HCS) and hospice.))~~ Home and community based (HCB) waiver services. ~~((+))~~ This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) waiver services administered by home and community services (HCS) ~~((and hospice services administered by the health care authority (HCA)))~~. The definitions in WAC 182-513-1100 and chapter 182-500 WAC apply throughout this chapter.

~~((2))~~ (1) The HCB service programs are:

(a) Community options program entry system (COPES);

(b) ~~((Program of all-inclusive care for the elderly (PACE)));~~

~~(c) Washington medicaid integration partnership (WMIP); or~~

~~(d)) New Freedom consumer directed services (New Freedom))~~

~~(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty five days upon discharge from a medical institution.~~

~~(4) Hospice services if you don't reside in a medical institution and:~~

~~(a) Have gross income at or below the special income level (SIL); and~~

~~(b) Aren't eligible for another CN or medically needy (MN) medicaid program.~~

~~(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.~~

~~(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for medicaid using noninstitutional CN rules.~~

~~(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN medicaid described in WAC 388-515-1507(1).~~

~~(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for medicaid under a CN program listed in WAC 388-515-1507(1). This is also called client participation or post eligibility); or~~

~~(c) Residential support waiver (RSW).~~

~~(2) WAC 182-515-1506 describes the general eligibility requirements for HCB waiver services authorized by HCS.~~

~~(3) WAC 182-515-1507 describes financial requirements for eligibility for HCB waiver services authorized by HCS when a person is eligible for a noninstitutional SSI-related categorically needy (CN) medicaid program.~~

~~(4) WAC 182-515-1508 describes the financial eligibility requirements for HCB waiver services authorized by HCS when a person is not eligible for SSI-related noninstitutional CN medicaid described in WAC 182-515-1507.~~

~~(5) WAC 182-515-1509 describes the rules used to determine a person's participation in the cost of care and room and board for HCB waiver services if the person is not eligible under WAC 182-515-1507.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1506 ((What are the general eligibility requirements for)) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((and hospice?)) general eligibility. (1) To be eligible for home and community based (HCB) waiver services ((and hospice you)) a person must:

(a) Meet the program and age requirements for the specific program:

(i) Community options program entry system (COPES), per WAC 388-106-0310;

(ii) (PACE, per WAC 388-106-0705;

(iii) WMIP waiver services, per WAC 388-106-0750;

~~(iv)) Residential support waiver (RSW), per WAC 388-106-0310; or~~

~~(iii) New Freedom, per WAC ((388-106-1410;~~

~~(v) Hospice, per chapter 182-551-WAC; or~~

~~(vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260)) 388-106-0338.~~

~~(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;~~

~~(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;~~

~~(d) Be residing in a medical institution as defined in WAC 182-500-0050, or be likely to be placed in one within the next thirty days without HCB waiver services provided under one of the programs listed in ((subsection (1))) (a) of this subsection;~~

~~(e) ((Have attained)) Attain institutional status as described in WAC ((388-513-1320)) 182-513-1320;~~

~~(f) Be ((determined in need of)) assessed for HCB waiver services and be approved for a plan of care ((as described in subsection (1))) under (a) of this subsection;~~

~~(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted((:~~

~~(i) Enhanced adult residential care (EARC) facility;~~

~~(ii) Licensed adult family home (AFH); or~~

~~(iii) Assisted living (AL) facility.~~

~~(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365;~~

~~(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.~~

~~(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long term care services)) alternate living facility described in WAC 182-513-1100.~~

~~(2) A person is not eligible for home and community based (HCB) waiver services if the person:~~

~~(a) Is subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 182-513-1363;~~

~~(b) Has a home with equity in excess of the requirements described in WAC 182-513-1350.~~

~~(3) Refer to WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.~~

~~((3)) (4) Current income and resource standard charts are located at: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1507 ((What are the financial requirements for)) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((when you are))—Financial eligibility if a person is eligible for ((*) an SSI-related noninstitutional categorically needy (CN) medicaid program((?)), ((+)) You are eligible for medicaid under one of the following programs:

~~(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;~~

~~(b) SSI-related CN medicaid described in WAC 182-512-0100 (2)(a) and (b);~~

~~(c) SSI-related health care for workers with disabilities program (HWD) described in WAC 182-511-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC 182-511-1250;~~

~~(d) Aged, blind, or disabled (ABD) cash assistance described in WAC 388-400-0060 and are receiving CN medicaid.~~

~~(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365. This does not apply to PACE or hospice services.~~

~~(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.~~

~~(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).~~

~~(5) You do not pay (participate) toward the cost of your personal care services.~~

~~(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.~~

~~(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.~~

~~(b) If subsection (6)(a) applies and you are receiving HWD described in WAC 182-511-1000, you are responsible to pay your HWD premium as described in WAC 182-511-1250, in addition to the ADSA room and board standard.~~

~~(7) If you are eligible for aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:~~

~~(a) When you live at home, you keep the cash grant amount authorized under WAC 388-478-0033;~~

~~(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard; or~~

~~(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive an ABD cash grant of thirty-eight dollars and eighty-four cents as described in WAC 388-478-0045, which you keep for your PNA.~~

~~(8) Current resource and income standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspnas.html>.~~

~~(9)) (1) A person is financially eligible for home and community based (HCB) waiver services if:~~

(a) Receiving coverage under one of the following supplemental security income (SSI)-related categorically needy (CN) medicaid programs:

(i) SSI program under WAC 182-510-0001. This includes SSI clients under Section 1619B of the Social Security Act;

(ii) SSI-related noninstitutional CN program under chapter 182-512 WAC;

(iii) Health care for workers with disabilities program (HWD) under chapter 182-511 WAC.

(b) The person does not have a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; and

(c) The person does not own a home with equity in excess of the requirements described in WAC 182-513-1350.

(2) A person eligible under this section does not pay participation toward the cost of personal care services, but must pay room and board if living in an alternate living facility.

(3) A person who lives in a department-contracted alternate living facility described in WAC 182-513-1100:

(a) Keeps a personal needs allowance (PNA) of sixty-two dollars and seventy-nine cents; and

(b) Pays remaining available income as room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents.

(4) A person who is eligible under the HWD program must pay the HWD premium described in WAC 182-511-1250, in addition to room and board if residing in an alternate living facility.

(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay participation toward the cost of personal care and keeps the following:

(a) The cash grant amount authorized under WAC 388-478-0033 when living at home;

(b) A PNA of thirty-eight dollars and eighty-four cents, and pays the remaining income and ABD cash grant to the facility for the cost of room and board up to the room and board standard when living in an adult family home (AFH); or

(c) The cash grant of thirty-eight dollars and eighty-four cents under WAC 388-478-0006 when living in an assisted living facility or enhanced adult residential center (EARC).

(6) Current resource, income, PNA and ADSA room and board standards are located at: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltestandardsPNAchartsubfile.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1508 ((How does the department determine if you are financially eligible for)) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((and hospice if you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)?))—Financial eligibility using SSI-related institutional rules. (1) If

~~((you are))~~ a person is not eligible for ~~((medicaid under))~~ a categorically needy (CN) program ~~((listed in))~~ under WAC ((388-515-1507(4))) 182-515-1507, the ~~((department must))~~ agency determines ((your)) eligibility for home and community based (HCB) waiver services authorized by home and community services (HCS) using institutional medicaid rules. This section explains how ~~((you))~~ a person may qualify using institutional ~~((medicaid))~~ rules described in this section.

(2) ~~((You))~~ A person must meet ~~((the))~~:

(a) General eligibility requirements ~~((described in WAC 388-513-1315 and 388-515-1506~~.

(3) You must meet the following resource requirements:

(a) Resource limits described in WAC 388-513-1350.

(b) If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 if you verify these expenses.

(4) You must meet) under WAC 182-513-1315 and 182-515-1506:

(b) The resource requirements under WAC 182-513-1350:

(c) The following income requirements:

~~((a-Your))~~ (i) Gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); or

~~((b)For home and community-based (HCB) service programs authorized by HCS your gross nonexcluded income is:~~

(i) Above the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and))

(ii) ~~((Net))~~ If gross nonexcluded income is above the special income level (SIL), net nonexcluded income is no greater than the effective one-person medically needy income level (MNIL). Net income is calculated by reducing gross nonexcluded income by:

(A) Medically needy (MN) disregards found ((in WAC 388-513-1345)) under WAC 182-513-1345; and

(B) The average monthly nursing facility state rate ((is five thousand six hundred and twenty six dollars. This rate will be updated annually starting October 1, 2012 and each year thereafter on October 1. This standard will be updated annually in the long term care standard section of the EAZ manual described at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>)).

~~((5))~~ (3) The ((department)) agency follows the rules in WAC ((388-515-1325, 388-513-1330, and 388-513-1340)) 182-513-1325, 182-513-1330, and 182-513-1340 to determine available income and income exclusions.

~~((6))~~ (4) A person eligible under this section may be required to participate available income toward the cost of care as described in WAC 182-515-1509.

(5) Current resource ((and)), income standards ((including the SIL, MNIL and FBR)), and the average state nursing facility rate for long-term care are found at: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1509 ((How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508?)) Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility. ~~((If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon))~~ (1) The agency determines how much a person must pay toward the cost of care for home and community based (HCB) waiver services authorized by home and community services (HCS) when living at home based on the following:

~~((1) If you are))~~ (a) A single ((and living)) person who lives at home (as defined in WAC 388-106-0010)((-you)) keeps ((all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA))) a personal needs allowance (PNA) of up to the federal poverty level (FPL) and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

~~((2) If you are))~~ (b) A married ((living)) person who lives with his or her spouse at home ((as defined in WAC 388-106-0010, you keep all your income up to the effective one-person medically needy income level (MNIL) for your PNA if your spouse lives at home with you. If you are married and living apart from your spouse, you're allowed to keep your income up to the FPL for your PNA.

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross nonexcluded income. The PNA is sixty two dollars and seventy nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the ADSA room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction)) (under WAC 388-106-0010, keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(c) A married person who lives at home and apart from his or her spouse keeps a PNA of up to the FPL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(d) A married couple who receive HCB HCS waiver services are each allowed to keep a PNA of up to the FPL and pays the remainder of each of their gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(e) A married couple living at home where each person receives HCB waiver services, one authorized by develop-

mental disabilities administration (DDA) and the other authorized by HCS is allowed the following:

(i) The DDA waiver person pays toward his or her cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The HCS waiver person retains the federal poverty level (FPL) and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions under subsection (3) of this section.

(2) The agency determines how much a person must pay toward the cost of care and room and board when living in a department contracted alternate living facility under WAC 182-513-1100 based on the following:

A single person or a married person who lives apart from his or her spouse:

(a) Keeps a PNA of sixty-two dollars and seventy-nine cents;

(b) Pays room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents; and

(c) Pays the remainder of gross nonexcluded income toward the cost of care after allowable deductions described in subsection (3) of this section.

(3) If income remains after the PNA and room and board liability described in subsections (1) and (2) of this section, the remaining gross nonexcluded income must be paid toward the cost of care after it is reduced by ((allowable)) deductions in the following order:

(a) ((If you are)) For a working person, the ((department)) agency allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income((-));

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from ((your)) the person's income according to a child support order in the month of the garnishment if it is for the current month. If the ((department)) agency allows this as deduction from ((your)) income, the ((department will)) agency does not count it as ((your)) the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for ((your)) the community spouse ((not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(H) Rent, including space rent for mobile homes, plus;

(I) Mortgage, plus;

(J) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, plus;

(V) The food assistance standard utility allowance (SUA) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(VII) Is reduced by your community spouse's gross countable income.

(iii) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress;)) as determined using the calculation described in WAC 182-513-1385;

(e) A monthly maintenance-needs ((amount)) allowance for each minor or dependent child, dependent parent, ((or)) dependent sibling of ((your)) the institutionalized person, institutionalized person's community spouse, or institutionalized person's institutionalized spouse((-The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a nonecustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less their separate income (child support received from a nonecustodial parent is considered the child's income)), as determined using the calculation described in WAC 182-513-1385.

(f) ((Your unpaid)) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC ((388-513-1350)) 182-513-1350 (8)(d).

(g) The total of the following deductions cannot exceed the special income level (SIL ((three hundred percent of the FBR))):

(i) ((Personal needs allowance)) The PNA allowed in subsection ((s)) (1)((;)) or (2) ((and (3)(a) and (b))) of this section; and

(ii) The earned income deduction ((of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4))) in (a) of this subsection; and

(iii) The guardianship fees and administrative costs in ((subsection (4)) (b) of this subsection.

(4) A person may have to pay third-party resources described under WAC 182-501-0200 in addition to the room and board and participation.

(5) ((You)) A person must pay ((your provider the combination of)) his or her provider the sum of the room and

board amount, and the cost of personal care services after all allowable deductions, and any third-party resources.

(6) ~~((You may have to pay third party resources described in WAC 182-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.~~

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>.

(8) ~~If you are))~~ A person is responsible only to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person participates only the difference up to the state rate cost of care.

(7) When a person lives in multiple living arrangements in a month ((an example is a move from an adult family home to a home setting on HCB services)), the ((department)) agency allows ((you)) the highest PNA available based on all the living arrangements and services ((you have)) the person has in a month.

~~((9) Current PNA and ADSA room and board))~~ (8) Standards described in this section are located at: ((http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/ltestandardsPNAchartsufile.shtml)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1510 ((Division of)) Home and community based (HCB) waiver services authorized by developmental disabilities ((DDD) home and community based services waivers)) administration (DDA). The ~~((four))~~ following five sections ~~((that follow))~~ describe the general and financial eligibility requirements for home and community based (HCB) waivers authorized by the ((division of)) developmental disabilities ((DDD) home and community based services (HCBS) waivers)) administration (DDA).

(1) The DDA waiver programs are:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

~~((1) WAC 388-515-1511))~~ (2) WAC 182-515-1511 describes the general eligibility requirements ~~((under the DDD-HCBS))~~ for HCB waiver ~~((s))~~ services authorized by DDA.

~~((2) WAC 388-515-1512))~~ (3) WAC 182-515-1512 describes the ~~((financial))~~ general eligibility requirements for ~~((the DDD waivers if you are))~~ HCB waivers authorized by DDA when a person is eligible for ~~((medicaid under the))~~ a noninstitutional SSI-related categorically needy (CN) program ~~((CN))~~.

~~((3) WAC 388-515-1513))~~ (4) WAC 182-515-1513 describes the ~~((initial))~~ financial eligibility requirements for

the ~~((DDD))~~ HCB waiver ~~((s if you are))~~ services authorized by DDA waivers when a person is not eligible for ~~((medicaid under))~~ a noninstitutional SSI-related categorically needy (CN) program ~~((CN listed in))~~ under WAC ~~((388-515-1512(4)))~~ 182-515-1512.

~~((4) WAC 388-515-1514))~~ (5) WAC 182-515-1514 describes the ~~((post eligibility financial requirements for the DDD waivers if you are not eligible for medicaid under a categorically needy program CN listed in))~~ rules used to determine a person's participation in the cost of care and room and board for HCB waiver services authorized by DDA if the person is not eligible under WAC ~~((388-515-1512(4)))~~ 182-515-1512.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1511 ((What are the general eligibility requirements for)) Home and community based (HCB) waiver services ((under the division of)) authorized by developmental disabilities ((DDD) home and community based services (HCBS) waivers?) administration (DDA)—General eligibility. ~~((1) This section describes the general eligibility requirements for waiver services under the DDD home and community based services (HCBS) waivers.~~

~~((2) The requirements for services for DDD HCBS waivers are described in chapter 388-845 WAC. The department establishes eligibility for DDD HCBS waivers.))~~ (1) To be eligible ((, you)) for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA), a person must:

(a) Meet the program requirements for the specific program as described in chapter 388-845 WAC;

(b) Be an eligible client of the ~~((division of developmental disabilities (DDD)))~~ DDA;

~~((b))~~ (c) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;

~~((e))~~ (d) Require the level of care provided in an intermediate care facility for the intellectually disabled (ICF/ID);

~~((d))~~ (e) Have attained institutional status ((as described in WAC 388-513-1320)) under WAC 182-513-1320;

~~((e))~~ (f) Be able to reside in the community and choose to do so as an alternative to living in an ICF/ID;

~~((f) Need waiver services as determined by your))~~ (g) Be assessed for HCB waiver services as determined by the person's plan of care or individual support plan, and:

(i) Be able to live at home with HCB waiver services; or

(ii) Live in a department-contracted facility, which includes:

(A) A group home;

(B) A group training home;

(C) A child foster home, group home, or staffed residential facility;

(D) An adult family home (AFH); or

(E) An adult residential care (ARC) facility.

(iii) Live in ~~((you))~~ his or her own home with supported living services from a certified residential provider; or

(iv) Live in the home of a contracted companion home provider(=and

(g) ~~Be both medicaid eligible under the categorically needy program (CN) and be approved for services by the division of developmental disabilities).~~

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363;

(b) Has a home with equity in excess of the requirements under WAC 182-513-1350.

(3) Refer to WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(4) Current income and resource standard charts are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1512 ((What are the financial requirements for the DDD waiver services if I am eligible for medicaid under the noninstitutional categorically needy program (CN)?)) Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility if a person is eligible for a noninstitutional SSI-related categorically needy (CN) program. ~~((1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for medicaid under a categorically needy program (CN) under one of the following programs:~~

~~(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility determined and maintained by the Social Security Administration;~~

~~(b) Health care for workers with disabilities (HWD) described in WAC 182-511-1000 through 182-511-1250;~~

~~(c) SSI-related (CN) medicaid described in WAC 182-512-0100 (2)(a) and (b) or meets the requirements in WAC 182-512-0880 and is (CN) eligible after the income disregards have been applied;~~

~~(d) CN medicaid for a child as described in WAC 182-505-0210 (1), (2), (7) or (8); or~~

~~(e) Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.~~

~~(2) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.~~

~~(3) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).~~

~~(4) If you are eligible for a CN medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1507. Room and board and long-term care standards are located at <http://www.dshs.wa.gov/manuals/ez/sections/LongTermCare/LTCstandardspna.shtml>.~~

~~(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents.~~

~~(5) If you are eligible for a premium based medicaid program such as health care for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN-P program.)~~ (1) A person is financially eligible for HCB waiver services if:

(a) Receiving coverage under one of the following SSI-related categorically needy (CN) medicaid programs:

(i) Supplemental security income (SSI) program under WAC 182-510-0001. This includes SSI clients under 1619B status;

(ii) Health care for workers with disabilities (HWD) under WAC 182-511-1000 through 182-511-1250;

(iii) SSI-related noninstitutional (CN) program under chapter 182-512 WAC;

(iv) The foster care program under WAC 182-505-0211 and meeting disability requirements described in WAC 182-512-0050.

(b) The person does not have a penalty period of ineligibility for the transfer of an asset as under WAC 182-513-1363; and

(c) The person does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A person eligible under this section does not pay participation toward the cost of services, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A person who lives in a department-contracted ALF:
(a) Keeps a personal needs allowance (PNA) of sixty-two dollars and seventy-nine cents; and

(b) Pays remaining available income as room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents.

(4) A person who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board if residing in an ALF.

(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay participation toward the cost of services and keeps the following:

(a) The cash grant amount authorized under WAC 388-478-0033 when living at home;

(b) A PNA of thirty-eight dollars and eighty-four cents, and pays the remaining income and ABD cash grant to the facility for the cost of room and board up to the room and board standard when living in an adult family home (AFH); or

(c) The cash grant of thirty-eight dollars and eighty-four cents authorized under WAC 388-478-0006 when living in an adult residential center (ARC) or DDA group home.

(6) Current resource, income, PNA and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

~~WAC 182-515-1513 ((How does the department determine if I am financially eligible for DDD waiver service medical coverage if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?)) Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility using institutional rules. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.~~

~~(1) Resource limits are described in WAC 388-513-1350. If you have resources which are higher than the standard allowed, we may be able to reduce resources by your unpaid medical expenses described in WAC 388-513-1350.~~

~~(2) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through 388-513-1365.~~

~~(d) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.~~

~~(3) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.~~

~~(4) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards for long term care services.~~

~~(5) Current income and resources standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.) (1) If a person is not eligible for a categorically needy (CN) program under WAC 182-515-1512, the agency determines eligibility for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) using institutional rules described in this section.~~

~~(2) A person must meet:~~

~~(a) General eligibility requirements under WAC 182-513-1315 and 182-515-1511;~~

~~(b) The resource requirements under WAC 182-513-1350.~~

~~(c) Gross nonexcluded income must be at or below the special income level (SIL).~~

~~(3) The agency follows the rules in WAC 182-513-1325, 182-513-1330, and 182-513-1340 to determine available income and income exclusions.~~

~~(4) A person eligible under this section may be required to pay participation toward the cost of care under WAC 182-515-1514.~~

~~(5) Current resource, income standards are found at: <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

~~WAC 182-515-1514 ((How does the department determine how much of my income I must pay towards the cost of my DDD waiver services if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?)) Home and community based (HCB) services authorized by developmental disabilities administration (DDA)—Client financial responsibility. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:~~

~~(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).~~

~~(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:~~

~~(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and~~

~~(b) Pay for your room and board up to the ADSA room and board rate described in <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.~~

~~(3) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction described in (2) above, is reduced by allowable deductions in the following order:~~

~~(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;~~

~~(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;~~

~~(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;~~

~~(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:~~

~~(i) Is allowed only to the extent that your income is made available to your community spouse; and~~

~~(ii) Consists of a combined total of both:~~

~~(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and~~

~~(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:~~

~~(i) Rent, including space rent for mobile homes, plus;~~

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative plus;

(V) ~~The food assistance standard utility allowance (SUA) provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;~~

(VI) ~~The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>; and~~

(VII) ~~Is reduced by your community spouse's gross countable income.~~

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

(4) If you are eligible for aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the ABD cash program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADOSA room and board standard described in <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>; or

(e) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) You may have to pay third party resources (TPR) described in WAC 182-501-0200 in addition to room and board and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.)) (1) The agency determines how much a person must pay toward the cost of care for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) when living at home based on the following:

(a) A single person who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the SIL.

(b) A single person who lives at home on roads to community living authorized by DDA keeps a PNA up to the SIL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(c) A married person who lives with his or her spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(d) A married couple living at home where each person receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The DDA waiver person retains the SIL as a PNA and pays the remainder of his or her gross nonexcluded income towards his or her cost of care after allowable deductions in subsection (3) of this section; and

(ii) The HCS waiver person pays toward his or her cost of care under WAC 182-515-1507 or 182-515-1509.

(2) The agency determines how much a person must pay toward the cost of care and room and board when living in a department-contracted ALF based on the following: A single person or a married person who lives apart from his or her spouse:

(a) Keeps a PNA of sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pays room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents; and

(c) Pays the remainder toward the cost of care after allowable deductions described in subsection (3) of this section.

(3) If income remains after the PNA and room and board liability described in subsections (1) and (2) of this section, the remaining income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) For a working person, the agency allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each minor or dependent child, dependent parent, dependent sibling of the institutionalized person, institutionalized person's community spouse, or institutionalized person's institutionalized spouse, as determined using the calculation described in WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 182-513-1350;

(g) The total of the following deductions cannot exceed the SIL:

(i) The PNA described in subsection (1) or (2) of this section;

(ii) The earned income deduction in (a) of this subsection; and

(iii) The guardianship fees and administrative costs in (b) of this subsection.

(4) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

(5) A person must pay his or her provider the sum of the room and board amount, the cost of services after all allowable deductions, and any third-party resources.

(6) A person is only responsible to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person participates only the difference up to the state rate cost of care.

(7) When a person lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services received within the month.

(8) Standards described in this section are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-515-1500 Payment standard for persons in certain group living facilities.

WSR 15-15-003

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed July 1, 2015, 12:35 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The purpose for this filing is to allow DSHS to continue the implementation of our new individual and family services (IFS) waiver and start another new program called community first choice (CFC) where both require changes to some of the same sections in chapter 388-845 WAC.

The CR-103E filed as WSR 15-12-072 is the original CR-103E filed and related to the IFS waiver and that emergency filing contains the original emergency amendments while this adds additional amendments related to the CFC program. This emergency supersedes WSR 15-12-072.

Citation of Existing Rules Affected by this Order: Amending 91. See Reviser's note below.

Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session for the IFS waiver and ESHB 2746 of the 63rd legislative [legislature], 2014 regular session for the CFC waiver.

Other Authority: RCW 71A.12.030, 71A.12.120.

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: See Reviser's note below.

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 16, Amended 91, 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 16, Amended 91, Repealed 0.

Date Adopted: June 30, 2015.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-17 issue of the Register.

WSR 15-15-005
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed July 1, 2015, 2:18 p.m., effective July 1, 2015, 2:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending the following rules to implement a nine percent increase in the payment standards for TANF, SFA, RCA, and CEAP, and increase the maximum earned income limit by nine percent for the TANF, SFA, RCA, PWA, and CEAP programs: WAC 388-478-0020 Payment standards for TANF, SFA, and RCA, 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA?, and 388-436-0050 Determining financial need and benefit amount for CEAP.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0020, 388-478-0035, and 388-436-0050.

Statutory Authority for Adoption: RCW 74.08.090, 74.08A.230.

Other Authority: State of Washington 2015-17 biennial operating budget (ESSB 6052, Section 207).

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

Reasons for this Finding: The Washington state 2015-17 biennial operating budget provides funding to increase the TANF payment standard by nine percent. This increase will provide essential financial supports to needy families and their vulnerable children.

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

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

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

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

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

Date Adopted: July 1, 2015.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-16-029, filed 7/27/11, effective 8/27/11)

WAC 388-478-0020 Payment standards for TANF, SFA, and RCA. (1) The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$ ((305)) <u>332</u>	6	\$ ((736)) <u>802</u>
2	((385)) <u>420</u>	7	((850)) <u>927</u>
3	((478)) <u>521</u>	8	((941)) <u>1,026</u>
4	((562)) <u>613</u>	9	((1,033)) <u>1,126</u>
5	((648)) <u>706</u>	10 or more	((1,123)) <u>1,224</u>

(2) The maximum monthly payment standards for TANF, SFA, and RCA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$ ((185)) <u>202</u>	6	\$ ((447)) <u>487</u>
2	((235)) <u>256</u>	7	((517)) <u>564</u>
3	((290)) <u>316</u>	8	((572)) <u>623</u>
4	((342)) <u>373</u>	9	((628)) <u>685</u>
5	((394)) <u>429</u>	10 or more	((683)) <u>744</u>

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA? To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Monthly Earned Income Level
1	\$ ((610)) <u>665</u>	6	\$ ((1,472)) <u>1,604</u>

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Monthly Earned Income Level	Assistance Unit Members	Net Income Limit
2	((770)) <u>839</u>	7	((1,700)) <u>1,853</u>	1	\$((275)) <u>300</u>
3	((955)) <u>1,042</u>	8	((1,882)) <u>2,051</u>	2	((346)) <u>377</u>
4	((1,124)) <u>1,225</u>	9	((2,066)) <u>2,252</u>	3	((429)) <u>468</u>
5	((1,295)) <u>1,413</u>	10 or more	((2,246)) <u>2,448</u>	4	((505)) <u>550</u>
				5	((582)) <u>634</u>
				6	((662)) <u>722</u>
				7	((762)) <u>834</u>
				8 or more	((847)) <u>923</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, for households with shelter costs as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need Item: Maximum allowable amount by assistance unit size:

AMENDATORY SECTION (Amending WSR 11-16-029, filed 7/27/11, effective 8/27/11)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for CEAP assistance, the assistance unit's nonexcluded income, minus allowable deductions, must be less than ninety percent of the TANF payment standard for households with shelter costs. The net income limit for CEAP assistance units is:

	1	2	3	4	5	6	7	8 or more
Food	\$((184)) <u>201</u>	\$((235)) <u>256</u>	\$((290)) <u>316</u>	\$((342)) <u>373</u>	\$((394)) <u>429</u>	\$((447)) <u>487</u>	\$((510)) <u>556</u>	\$((564)) <u>615</u>
Shelter	((225)) <u>245</u>	((284)) <u>310</u>	((354)) <u>386</u>	((417)) <u>455</u>	((479)) <u>522</u>	((543)) <u>592</u>	((629)) <u>686</u>	((695)) <u>758</u>
Clothing	((26)) <u>28</u>	((33)) <u>36</u>	((41)) <u>45</u>	((48)) <u>52</u>	((55)) <u>60</u>	((64)) <u>70</u>	((72)) <u>78</u>	((82)) <u>89</u>
Minor Medical Care	((156)) <u>170</u>	((199)) <u>217</u>	((247)) <u>269</u>	((290)) <u>316</u>	((334)) <u>364</u>	((377)) <u>411</u>	((439)) <u>479</u>	((485)) <u>529</u>
Utilities	((76)) <u>83</u>	((96)) <u>105</u>	((119)) <u>130</u>	((139)) <u>152</u>	((161)) <u>175</u>	((184)) <u>201</u>	((213)) <u>232</u>	((235)) <u>256</u>
Household maintenance	((55)) <u>60</u>	((71)) <u>77</u>	((88)) <u>96</u>	((103)) <u>112</u>	((119)) <u>130</u>	((135)) <u>147</u>	((156)) <u>170</u>	((172)) <u>187</u>
Job related transportation	((305)) <u>332</u>	((385)) <u>420</u>	((478)) <u>521</u>	((562)) <u>613</u>	((648)) <u>706</u>	((736)) <u>802</u>	((850)) <u>927</u>	((941)) <u>1,026</u>
Child related transportation	((305)) <u>332</u>	((385)) <u>420</u>	((478)) <u>521</u>	((562)) <u>613</u>	((648)) <u>706</u>	((736)) <u>802</u>	((850)) <u>927</u>	((941)) <u>1,026</u>

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

(a) The assistance unit's net income, as determined under subsection (1) of this section;

(b) Cash on hand, if not already counted as income; and

(c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection

(3) of this section, is equal to or exceeds its allowable amount of need.

**WSR 15-15-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-198—Filed July 1, 2015, 3:31 p.m., effective July 1, 2015, 3:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-310-180.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: July 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000S Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective immediately until further notice, it is permissible to fish for salmon in waters of the Chehalis River from the mouth to South Elma Bridge (Wakefield Road). Daily limit of six fish, up to three may be adults, release adult Chinook salmon.

**WSR 15-15-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-197—Filed July 1, 2015, 3:37 p.m., effective July 5, 2015]

Effective Date of Rule: July 5, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-19500Z.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Closing the Grand Ronde spring Chinook fishery is necessary since the river is experiencing extremely low flows and increasing water temperatures that may affect survival of Endangered Species Act listed fishing handled during the fishery. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: July 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective one hour after official sunset on July 5, 2015:

WAC 220-310-19500Z Freshwater exceptions to statewide rules—Eastside. (15-163)

**WSR 15-15-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-195—Filed July 1, 2015, 3:43 p.m., effective July 2, 2015, 6:00 p.m.]

Effective Date of Rule: July 2, 2015, 6:00 p.m.

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

relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Sets a 2.5 day treaty commercial gill net season for salmon. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries and the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason forecast for summer Chinook is eighty-five thousand fish, and twenty-five thousand eight hundred harvestable fish are available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5, June 10 and 30, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100C Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 6:00 a.m. July 6 to 6:00 p.m. July 8, 2015

(b) Gear: Gillnets. 7-inch minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

(b) Area: Drano Lake, Wind River and Klickitat River.

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

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately through July 31, 2015. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. July 2, 2015:

WAC 220-32-05100B Columbia River salmon seasons above Bonneville Dam. (15-172)

WSR 15-15-010 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-196—Filed July 1, 2015, 4:49 p.m., effective July 3, 2015]

Effective Date of Rule: July 3, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000K; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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: Extends the 2015 sport fishery on the Columbia River downstream of Bonneville Dam through July 31, 2015. Adjusts the daily bag limit in the area from the Astoria-Megler Bridge upstream to the Oregon/Washington border. The daily bag limit will allow any Chinook to be retained (fin clipped or not) as part of the daily limit, but only one can be an adult Chinook. The area from the Oregon/Washington border upstream to Priest Rapids Dam remains open and the daily bag limit remains consistent with permanent regulations outlined in the 2015-2016 fishing pamphlet. Harvestable summer Chinook and Sockeye are available for harvest based on inseason forecasts and management agreements. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act (ESA). On May 5, 2008, the

National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: July 1, 2015.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000Q Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective July 3 through July 31, 2015, it is permissible to fish in waters of the Columbia River from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(1) Daily salmonid limit is 6 fish; minimum size is 12 inches. Up to 2 may be adult salmon or hatchery steelhead or 1 of each. Only 1 may be an adult Chinook.

(2) Any Chinook (adipose fin clipped or not) may be kept. Sockeye are included in the daily adult salmonid limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 3, 2015:

WAC 220-310-20000K Freshwater exceptions to statewide rules—Columbia River. (15-125)

WSR 15-15-037 EMERGENCY RULES DEPARTMENT OF HEALTH

[Filed July 8, 2015, 11:00 a.m., effective July 8, 2015, 11:00 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-296 WAC, Drinking water state revolving fund loan program (DWSRF), the rule is necessary to award loans to public water systems due to an emergency event that results in an immediate threat to public health and safety.

Citation of Existing Rules Affected by this Order: Amending WAC 246-296-010, 246-296-020, 246-296-050, and 246-296-070

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: Safe Drinking Water Act.

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 Administrative Procedure Act allows the department of health (department) to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) 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;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011 [2009, 2010, 2011, 2012, or 2013], which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

An emergency rule is necessary to amend chapter 246-296 WAC, Drinking water state revolving fund loan program, to include requirements for water systems to obtain a low interest or no interest loan specifically for emergency recovery activities due to a loss of critical drinking water services or facilities. The existing rule establishes eligibility, priority, and selection criteria for infrastructure loans for addressing problems such as:

- Replacing aging infrastructure;
- Installing treatment to remove contaminants; and
- Restructuring at risk water systems.

The rule does not identify specific criteria or requirements for awarding loans due to an emergency event. Currently, public water systems are required to meet eligibility requirements that in some cases are impossible for water system[s] to meet in response to an emergency event. WAC 246-296-100(2), requires a loan applicant to have a current department approved water system plan (WSP) that includes the proposed project. Because a water system cannot foresee an emergency project before it happens, the water system would not be able to include the project within its WSP. To meet this requirement, a water system would have to submit a WSP update and include the proposed project for department review and approval. At a minimum, the timeframe to get an approved WSP in place is six months. The planning and department review and approval timeframe is well outside the acceptable norm for responding to and recovering from an emergency event, and may result in a failure to protect public health.

This emergency rule is adopted in response to wildfires in multiple parts of the state. To protect public health and safety by making emergency funds available to public water systems in Washington state, the department must immediately adopt a rule.

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 4, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: July 8, 2015.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-010 Purpose and scope. The purpose of this chapter is to:

(1) Establish a funding program for public water system infrastructure improvements that increase a public water system's ability to provide safe and reliable drinking water and improve public health protection;

(2) Establish eligibility criteria for public water systems to receive funding including, but not limited to, proper operation, management, and maintenance consistent with federal DWSRF capacity requirements;

(3) Provide additional financial assistance to eligible disadvantaged communities;

(4) Provide DWSRF loans in response to an emergency;

(5) Use a portion of the EPA capitalization grant for set-aside activities according to federal law;

~~((6))~~ (6) Establish that sound financial practices and ongoing oversight are in place to manage the DWSRF in perpetuity;

~~((7))~~ (7) Establish requirements for public water systems to receive a DWSRF loan including, but not limited to, planning requirements; being resource efficient, sustainable, and environmentally sound; ~~(and~~

~~(7))~~ (8) Establish requirements for public water systems to receive a DWSRF loan in response to an emergency; and

(9) Establish the responsibilities of the department, the board, and commerce, for administering the DWSRF loan program.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-020 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "**Affordability**" means a community's ability, on a per household basis, to pay for rate increases that result from a DWSRF loan project.

(2) "**Application**" means the DWSRF loan request form provided by the department.

(3) "**Application package**" means the DWSRF loan application form(s), requirements, terms of assistance, and related information created by the department, the board, and commerce.

(4) "**Board**" means the Washington state public works board.

(5) "**Borrower**" means the person that has legal and financial responsibility for the DWSRF loan.

(6) "**Capitalization grant**" means an award by EPA of funds to a state for the DWSRF and other purposes as authorized in Section 1452 of the SDWA.

(7) "**Commerce**" means the Washington state department of commerce.

(8) "**Construction completion report**" means a form provided by the department and completed for each specific construction project to document:

(a) Project construction in accordance with chapter 246-290 WAC and general standards of engineering practice;

(b) Physical capacity changes;

(c) Satisfactory test results; and

(d) The completed form is stamped with an engineer's seal, and signed and dated by a professional engineer.

(9) "**Default**" means failure to meet a financial obligation such as a DWSRF loan payment.

(10) "**Department**" means the Washington state department of health.

(11) "**Disadvantaged community**" means the service area of a proposed project within a public water system where the project will result in:

(a) Water rates that are more than one and one-half percent of the MHI of the service area; or

(b) Restructuring, when one or more public water systems are having financial difficulties.

(12) "**DWSRF (drinking water state revolving fund)**" means the program that meets the requirements of RCW 70.119A.170 to administer federal funds and other funds deposited in a dedicated account used to finance public water system infrastructure improvements and drinking water program activities.

(13) "**DWSRF loan**" means an agreement between the board and the borrower in which the DWSRF provides funds for eligible assistance and the borrower agrees to repay the principal sum, applicable interest, and DWSRF loan fee to the DWSRF.

(14) "**DWSRF loan fee**" means a nonrefundable fee that is charged on all DWSRF loans, including DWSRF loans for which all or part of the principal is forgiven.

(15) "**Ecology**" means the Washington state department of ecology.

(16) "**Eligible public water system**" means a Group A community public water system, either privately or publicly owned, or a nonprofit Group A noncommunity public water system.

(17) "**Emergency**" means an event such as a natural disaster or other unforeseen or unavoidable circumstances that causes damage or disrupts normal public water system operations and requires immediate action to protect public health and safety. A failure to maintain, replace, reconstruct, upgrade, or make necessary infrastructure improvements does not constitute an emergency.

(18) "**EPA**" means the United States Environmental Protection Agency.

~~((18))~~ (19) "**Green project**" means a public water system infrastructure improvement project that includes water efficiency, energy efficiency, or environmental innovations as follows:

(a) Water efficiency projects use improved technologies and practices to deliver equal or better service with less water, including preventing water loss and reducing customer demand to protect water resources;

(b) Energy efficiency projects use improved technologies and practices to reduce energy consumption or produce cleaner energy for use in water treatment;

(c) Environmentally innovative projects use new or innovative approaches to manage water resources in a more environmentally sustainable way. Projects that are considered environmentally innovative include those that:

(i) Prevent or remove pollution;

(ii) Help a community adapt to climate change through water resource protection programs; or

(iii) Result in other proven, sustainable environmental benefits.

~~((19))~~ (20) "**Group A public water system**" means a public water system providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act, P.L. 104-182, Section 101(b).

A Group A public water system is further defined as a community or noncommunity public water system.

(a) "Community public water system" means any Group A public water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regard-

less of the number of people, or regularly serving at least twenty-five people year-round more than one hundred eighty days per year, as defined in chapter 246-290 WAC.

(b) "Noncommunity public water system" means a Group A public water system that is not a community public water system. Noncommunity public water systems are further defined as:

(i) "Nontransient noncommunity public water system" means a public water system that serves twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year.

(ii) "Transient noncommunity public water system" means a public water system that serves:

(A) Twenty-five or more different people each day for sixty or more days within a calendar year;

(B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or

(C) One thousand or more people for two or more consecutive days within a calendar year.

~~((20))~~ (21) "**Group B public water system**" means a public water system that is not a Group A public water system. A public water system is classified as a Group B public water system if it serves fewer than fifteen service connections, and:

(a) Fewer than twenty-five people; or

(b) Twenty-five or more people per day for less than sixty days per year provided the public water system does not serve one thousand or more people for two or more consecutive days.

~~((21))~~ (22) "**Individual water supply system**" means any water system that is not subject to chapter 246-290 or 246-291 WAC; and provides water to either one single-family residence, or to a system with four or fewer connections, all of which serve residences on the same farm.

~~((22))~~ (23) "**IUP (intended use plan)**" means the federally required document prepared each year by the department identifying the intended uses of the DWSRF funds and describing how those uses support the DWSRF goals.

~~((23))~~ (24) "**Loan closeout**" means a loan agreement is complete when the loan is repaid in full.

~~((24))~~ (25) "**MHI (median household income)**" means the midpoint or the average of two midpoints in the range of household incomes in the project's service area. The median divides the list of households in a service area into two parts; half of the households exceed the median, and half of the households are below the median.

~~((25))~~ (26) "**Multiple benefit**" means projects that address more than one type of health risk.

~~((26))~~ (27) "**Municipality**" means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

~~((27))~~ (28) "**NEPA**" means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

~~((28))~~ (29) "**Nonprofit organization**" means an entity that has a federal tax exempt status identification number.

~~((29))~~ (30) "**Owner**" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or

cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

~~((30))~~ (31) **"Person"** means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

~~((31))~~ (32) **"Principal forgiveness"** means that a reduction of up to fifty percent of the total loan amount is not required to be paid back by the borrower. For a DWSRF emergency loan, principal forgiveness is a reduction of up to seventy-five percent of the total loan amount. Principal forgiveness is applied when the project is complete.

~~((32))~~ (33) **"Project report"** means a department-approved document the borrower or borrower's agency develops under WAC 246-290-110.

~~((33))~~ (34) **"Public water system"** means any public water system providing water for human consumption through pipes or other constructed conveyances, excluding water systems serving only one single-family residence and water systems with four or fewer connections, all of which serve residences on the same farm. This includes:

(a) Collection, treatment, storage, and distribution facilities under control of the owner, or owner's authorized agent, primarily used in connection with the public water system; and

(b) Collection or pretreatment storage facilities not under the control of the owner, or owner's authorized agent, but primarily used in connection with the public water system.

~~((34))~~ (35) **"Receivership"** means the voluntary or involuntary transfer of ownership and operation of a public water system according to chapter 7.60 RCW and RCW 43.70.195.

~~((35))~~ (36) **"Regional benefit"** means project improvements that affect more than one public water system.

~~((36))~~ (37) **"Restructuring"** means changing public water system ownership, including, but not limited to:

(a) Consolidation of two or more existing public water systems into a single public water system;

(b) Transfer of ownership; or

(c) Receivership.

~~((37))~~ (38) **"SDWA (Safe Drinking Water Act)"** means Public Law 93-523, including all amendments.

~~((38))~~ (39) **"SEPA"** means the State Environmental Policy Act under chapter 43.21C RCW.

~~((39))~~ (40) **"Set-aside"** means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities under Section 1452 of the SDWA, to fund new programs, and for other drinking water program activities.

~~((40))~~ (41) **"SERP (state environmental review process)"** means the NEPA-like environmental review process adopted by Washington state to comply with the requirements of 40 C.F.R. 35.3140. SERP combines the SEPA review with additional elements to comply with federal requirements.

~~((41))~~ (42) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

~~((42))~~ (43) **"Sustainable"** means able to continue a benefit into the future as a result of appropriate public water

system design, processes, operations, governance, and maintenance.

~~((43))~~ (44) **"SWSMP (small water system management program)"** means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

~~((44))~~ (45) **"System capacity"** means a public water system's operational, technical, managerial, and financial capability to achieve and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

~~((45))~~ (46) **"Transfer of ownership"** means to change legal ownership of a public water system from one person to another.

~~((46))~~ (47) **"Water right"** means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

~~((47))~~ (48) **"WFI (water facilities inventory)"** means a department form summarizing a public water system's characteristics.

~~((48))~~ (49) **"WSP (water system plan)"** means a document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-050 DWSRF loan terms. (1) The board may approve a DWSRF loan for a project that will not serve a disadvantaged community at or below market interest rates for a maximum of twenty years from project completion.

(2) The board may approve a DWSRF loan for projects that will serve disadvantaged communities:

(a) At an interest rate set at or below market interest rates for up to thirty years, as long as the DWSRF loan does not exceed the useful life of the project; ~~((or))~~

(b) That qualifies for principal forgiveness for up to fifty percent of the principal DWSRF loan amount; or

(c) That qualifies for principal forgiveness for up to seventy-five percent of the principal DWSRF loan amount for an emergency loan.

(3) A project is considered complete when the department approves the construction completion report.

(4) The borrower shall begin repaying the principal and interest no later than one year after the project is complete.

(5) The department and the board shall:

(a) Set terms that secure repayment of the debt and maintain a financially sound DWSRF program in perpetuity; and

(b) Publish specific rates and contract terms in the annual application package.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-070 Eligible projects and project-related costs. (1) Projects eligible for a DWSRF loan include those that:

(a) Address or prevent violations of applicable federal, state, and local drinking water requirements;

(b) Replace aging infrastructure to help a public water system comply with applicable federal, state, and local drinking water requirements to improve public health protection;

(c) Improve system capacity of a public water system to help assure sustainable drinking water; ((~~or~~))

(d) Promote increased water or energy efficiency, green projects, or innovation that will improve environmental sustainability and protect public health; or

(e) Respond to an emergency.

(2) Specific project-related costs eligible for a DWSRF loan include, but are not limited to, those that:

(a) Improve a public water system's treatment, transmission, distribution, source, or storage;

(b) Restructure water supplies or public water systems that have system capacity difficulties;

(c) Retroactively finance municipal projects that:

(i) Are for surface water treatment;

(ii) Address groundwater under the direct influence of surface water;

(iii) Address volatile organic or inorganic chemicals; or

(iv) Are required by department or EPA order;

(d) Acquire real property if needed to meet or maintain compliance with regulations or increase public health protection;

(e) Pay for planning or design that is directly related to a DWSRF eligible project;

(f) Finance the costs of restructuring for a publicly owned public water system;

(g) Acquire, build, or repair reservoirs, including clear wells, that are part of the treatment process and located on the same property as the treatment facility;

(h) Acquire, build, or repair distribution reservoirs; or

(i) Are associated with a department-approved green project.

NEW SECTION

WAC 246-296-105 DWSRF emergency loans. (1) When the department determines an emergency exists and emergency funding is available, the department may award a DWSRF emergency loan to an eligible public water system that meets the requirements of this chapter, except that the department may waive one or more of the DWSRF loan requirements under WAC 246-296-100, 246-296-120, 246-296-130, 246-296-140, and 246-296-150.

(2) An applicant must submit a completed emergency application package to the department to be considered for a DWSRF emergency loan.

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

[Order 15-200—Filed July 8, 2015, 4:36 p.m., effective July 8, 2015, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Extends this week's fishery to include Thursday July 9. Sets a 2.5 day treaty commercial gill net season for salmon the following week. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries and the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason forecast for summer Chinook is one hundred thousand fish, and thirty-one thousand eight hundred harvestable fish are available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5, June 10 and July 7, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed

as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 8, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100D Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: Immediately until 6:00 p.m. July 9, 2015 and 6:00 a.m. July 13 until 6:00 p.m. July 15, 2015

(b) Gear: Gillnets. 7-inch minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

(b) Area: Drano Lake, Wind River and Klickitat River.

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

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately through July 31, 2015. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is

prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100C Columbia River salmon seasons above Bonneville Dam. (15-195)

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

[Order 15-201—Filed July 8, 2015, 4:36 p.m., effective July 8, 2015, 7:00 p.m.]

Effective Date of Rule: July 8, 2015, 7:00 p.m.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Sets two mainstem commercial fishing period[s] for summer Chinook. The inseason summer Chinook forecast is one hundred thousand fish. A run of this size allocates nearly three thousand Chinook available for

harvest in mainstem commercial fisheries. The inseason sockeye forecast is four hundred eighty thousand fish. A run of this size allocates one thousand six hundred sockeye available for harvest in mainstem commercial fisheries. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 7, 2015. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: July 8, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000T Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Mainstem Columbia River

(a) **Dates:** 7:00 PM July 8 to 7:00 AM July 9 and 7:00 PM July 14 to 7:00 AM July 15, 2015.

(b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

(c) **Sanctuaries:** Elochoman-A, Cowlitz River, Kalama-A, Lewis-A, Sandy, and Washougal rivers.

(d) **Allowable Possession:** Chinook, sockeye and shad.

(e) **Gear:** Drift nets only. 8-inch minimum mesh size.

(f) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)).

(g) **Multi-Net Rule:** It is permissible to possess onboard a vessel nets not specifically authorized for use in these areas so long as they are properly stored (WAC 220-33-001(2)).

(h) **Lighted Buoys:** Nets fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is fished while attached to a boat, then one lighted buoy on the opposite end of the net from the boat is required.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. July 8, 2015:

WAC 220-33-01000S Columbia River seasons below Bonneville. (15-174)

WSR 15-15-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-202—Filed July 9, 2015, 2:16 p.m., effective July 9, 2015, 2:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000X; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the

recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 9, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-24-04000Y All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

July 10 through July 14, 2015;
July 17 through July 21, 2015;
July 24 through July 28, 2015;
July 31 through August 4, 2015;
August 7 through August 11, 2015;
August 14 through August 18, 2015;
August 21 through August 25, 2015;
August 28 through September 1, 2015;
September 4 through September 8, 2015;
September 11 through September 15, 2015;
September 18 through September 22, 2015.

(2) Landing and possession limits:

(a) 75 Chinook and 50 marked coho per boat per each entire open period for the entire Catch Areas 1 and 2.

(b) 60 Chinook and 50 marked coho per boat per each entire open period for the entire Catch Areas 3 and 4.

(c) No vessel may possess, land or deliver more than 75 chinook and 50 Marked coho during any open period. The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in

August and September. It is unlawful to possess wild coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single-point, single-shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with area fished, total Chinook and halibut catch on board, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch on board, and destination.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(7) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) Mandatory Yelloweye Rockfish Conservation Area - This is defined as the area in Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.

wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000X All-citizen commercial salmon troll.
(15-194)

WSR 15-15-062 EMERGENCY RULES DEPARTMENT OF ECOLOGY

[Order 15-05—Filed July 10, 2015, 11:38 a.m., effective July 10, 2015,
11:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rule making adopts rules in chapter 173-167 WAC.

Statutory Authority for Adoption: EHB 1115, section 3084, Laws of 2015 3rd sp. sess.

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 rule is necessary to protect public health and safety and promote timelines that are in the best interest of the public. Once the rule is in place, ecology may distribute funds to alleviate hardship. Drought can cause immediate impacts to public bodies. To address these impacts, drought funds need to be administered in a timely fashion.

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 10, 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 10, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 0, Repealed 0.

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

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

Date Adopted: July 10, 2015.

Maia D. Bellon
Director

Chapter 173-167 WAC
EMERGENCY DROUGHT FUNDING

PART I

DROUGHT FUNDING—GENERAL CRITERIA

NEW SECTION

WAC 173-167-010 Funding available to public bodies. The department of ecology (ecology) is authorized to provide funding to public bodies for projects designed to alleviate hardship arising from drought conditions which may affect public health and safety or cause significant economic or environmental impacts including, but not limited to:

- (1) Municipal drinking water supplies;
- (2) Agricultural activities;
- (3) Maintaining instream flows to protect fish and wild-life habitat.

NEW SECTION

WAC 173-167-020 Purpose and authority. This emergency rule establishes criteria by which ecology may disburse funds appropriated for drought relief within an area with a state declared drought as defined in WAC 173-166-030(2). This rule is supplemental to chapter 173-166 WAC. In the event that there is any conflict between this rule and chapter 173-166 WAC, the provisions of this chapter control.

Ecology is authorized to expend drought relief funds in 2015 under EHB 1115, section 3084, Laws of 2015 3rd special session.

NEW SECTION

WAC 173-167-030 Qualifying public bodies. These include any federal, state, local agency, political subdivision, taxing district, or municipal corporation thereof, and those Indian tribes now or hereafter recognized as such by the federal government for participation in the federal land and water conservation program and which may constitutionally receive grants from the state of Washington.

NEW SECTION

WAC 173-167-040 Funding limitations. (1) Ecology will administer grants in accordance with the "*Administrative Requirements for Recipients of Ecology Grants and Loans.*" (Publication No. 91-18). Revised September 2005.

(2) Except for state agency applicants and as provided for in subsection (3) of this section, applicants must provide cash match totaling fifty percent of the total eligible cost of the project. Funds used as match may not originate from other state funds.

(3) If an applicant proposes a drinking water supply project to address the immediate hardship arising from drought conditions and it serves a population of less than twenty-five thousand individuals with a mean household income of eighty percent or less of the state average, these applicants qualify for an exemption from the cash match requirement provided the project demonstrates a cost effective approach.

(4) The highest level of funding the department may provide to an applicant is five hundred thousand dollars.

NEW SECTION

WAC 173-167-050 Eligibility for funding. To be eligible for funding, the proposed project must meet the following criteria:

(1) The applicant must be a public body, as defined under WAC 173-167-030.

(2) The reduction in water supply must be presently causing, or likely to cause, undue hardship for the applicant.

(3) The proposed project must be for the purpose of supplying water to a previously established activity that is authorized under an existing water right.

(4) The proposed project must be able to timely assist in alleviating the current water shortage caused by drought conditions. The applicant must obtain all required permits and approvals for the proposed project before payment is authorized.

(5) The proposed project must be completed during the current drought declaration and the capacity to complete the project in a timely fashion must be demonstrated to ecology.

NEW SECTION

WAC 173-167-060 Applications and assistance. Applications for funding assistance under this section or any questions about funding assistance under this section should be directed to:

Rebecca Inman
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
360-407-6450
rebecca.inman@ecy.wa.gov

NEW SECTION

WAC 173-167-070 Related permits to be processed expeditiously. Under RCW 43.83B.410 (1)(b):

(1) All state and local agencies, including ecology, will issue permits or other authorizations for the proposed project within fifteen calendar days; and

(2) Drought relief projects funded through this program are exempted from any statutory requirements of public notice, competitive bidding, and chapter 43.21C RCW, State Environmental Policy Act.

NEW SECTION

WAC 173-167-080 Examples of eligible water supply projects. (1) Projects eligible for funding include, but are not

limited to, water conservation, acquiring alternate water sources, or temporarily changing or transferring water rights. Eligible projects must represent an additional cost to the applicant as the result of drought conditions, and not normal water supply costs. Measures to implement water conservation projects eligible for funding include, but are not limited to:

- (a) Irrigation scheduling programs and activities;
 - (b) Water use reduction programs and activities;
 - (c) Emergency regional water conservation programs, with preference given to applications submitted by multiple public entities; and
 - (d) Education programs designed to alleviate water shortage and hardship emergency.
- (2) Examples of water supply projects eligible for funding include, but are not limited to:
- (a) Modifying an existing source or deepening an existing well;
 - (b) Developing an emergency or alternate water source;
 - (c) Purchasing or leasing water or water rights to be used during the drought period;
 - (d) Constructing an emergency intertie to another approved public water supply;
 - (e) Building transmission pipelines, diversion structures, storage devices, discharge lines, and/or pumps and accessories;
 - (f) Installing source meters and measuring devices;
 - (g) Improving canals and laterals with control structures;
 - (h) Detecting and repairing leaks and lining leaky canals; and
 - (i) Regulating reservoirs;
- (3) Costs of providing personnel necessary to implement the activities in subsection (1) of this section, and for construction, operation, and maintenance associated with subsection (2) of this section are also eligible for funding under this program.

NEW SECTION

WAC 173-167-090 Priority for funding. (1) Priority will be given to proposed projects which incorporate elements that most effectively conserve water, represent the more efficient use of available water supplies, and that will address shortages that pose the greatest hardship arising from drought conditions which may affect public health and safety or cause significant economic or environmental impacts.

(2) Priority will also be given to applicants demonstrating the clearest need for alternate emergency water supplies to avoid undue hardship where the proposed project will address the need before the current drought declaration expires. Need will be measured by:

- (a) The short-term and long-term effects the water shortage would have on agricultural crops, livestock operations, or a municipality or utility's ability to provide drinking water in its service area, in the absence of drought relief.
- (b) The capability and reliability of the proposed project to provide an emergency water supply to the applicant.
- (c) The percent of water shortage experienced or forecast for the applicant.

NEW SECTION

WAC 173-167-100 Preferences. Where there are two or more eligible projects of equal or similar priority but funding limitations preclude funding both, applications that fulfill the following criteria will be preferred:

- (1) Demonstrating that reasonable efforts to address their water supply shortage by implementing measures such as water conservation plans, water system efficiency improvements, water shortage response plans, or other drought contingency actions, have already been completed.
- (2) Providing cash match from other local or federal sources in addition to the minimum cash match requirements set out in WAC 173-167-040.
- (3) Demonstrating the cost benefit of the proposed project through a calculation of the cost per unit of water developed under this funding. Water supply developed in a more cost effective manner will be preferred.
- (4) For municipal drinking water projects, applicants who have developed and are following a water shortage response plan.

**WSR 15-15-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-205—Filed July 13, 2015, 1:40 p.m., effective July 14, 2015, 11:59 p.m.]

Effective Date of Rule: July 14, 2015, 11:59 p.m.

Purpose: Amend commercial fishing rules for Puget Sound commercial shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100D; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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 2015 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes Catch Area 23A-E to spot shrimp fishing, as the quota will be reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 13, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100E Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 2W, 6 and Marine

Fish/Shellfish Management and Catch Reporting Area (Catch

Area) 23A-E are closed to the harvest of spot shrimp.

(iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all species other than spot shrimp.

(b) The spot shrimp catch accounting biweekly management periods are July 15-28 and July 29-August 11.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds per biweekly management period.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(2) Shrimp beam trawl gear:

(a) Effective immediately until further notice, Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Effective immediately until further notice, those portions of Catch Areas 20B, 21A and 22A within SMA 1B are open.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. July 14, 2015:

WAC 220-52-05100D Puget Sound shrimp pot and beam trawl fishery—Season. (15-185)

WSR 15-15-082

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-207—Filed July 14, 2015, 12:17 p.m., effective July 21, 2015, 4:30 a.m.]

Effective Date of Rule: July 21, 2015, 4:30 a.m.

Purpose: Amend rules in the recreational spot shrimp fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500U; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available for eight additional days of fishing in a portion of Marine Area 7 south. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 14, 2015.

J. W. Unsworth
Director

NEW SECTION**WAC 220-56-32500V Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-325, effective immediately until further notice:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5 and 6 (excluding the Discovery Bay Shrimp District) are open to the harvest of all shrimp species.

(2) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as follows:

(a) Effective immediately through 10:00 p.m. July 28, 2015, the portion of Marine Area 7 west of a line projected due south from Point Colville on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line projected due west from Lime Kiln Point light to the international boundary: Open to the harvest of all shrimp species.

(b) The portion of Marine Area 7 north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary, then west of a line from the bell buoy at the international boundary to Point Doughty on Orcas Island, then west of a line projected true north and south from the western tip of Crane Island, then west of a line projected from the southern tip of Shaw Island to the number 2 buoy at the entrance to Fisherman Bay: Open to the harvest of all shrimp species.

(c) The portion of Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, then east of a line projected true north and south from the western tip of Crane Island, then east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary:

(i) Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

(ii) It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) All waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:30 a.m. July 21, 2015:

WAC 220-56-32500U Shrimp—Areas and seasons. (15-162)

WSR 15-15-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-209—Filed July 14, 2015, 4:49 p.m., effective July 14, 2015, 5:00 p.m.]

Effective Date of Rule: July 14, 2015, 5:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000T.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Repeals the mainstem commercial fishing period previously adopted for the evening of July 14. Catch was higher than expected in last week's fishery and the commercial harvest guideline of three thousand three hundred fifteen summer Chinook has been met. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 14, 2015. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the

2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: July 14, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:00 p.m. July 14, 2015:

WAC 220-33-01000T Columbia River seasons below Bonneville. (15-201)

WSR 15-15-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-208—Filed July 14, 2015, 5:32 p.m., effective July 14, 2015, 5:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

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

Reasons for this Finding: This emergency rule is needed to require release of salmon marked with floy tags and/or one or more holes (round, approximately 1/4" in diameter) punched in the tail as they have been anesthetized during various studies and should not be kept or consumed. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 14, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000R Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective immediately until further notice, salmon with floy tags and/or one or more holes (round, approximately 1/4" in diameter) punched in the tail must be released in waters from Priest Rapids Dam upstream to Chief Joseph Dam and tributaries.

WSR 15-15-110
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-178—Filed July 16, 2015, 11:27 a.m., effective July 18, 2015]

Effective Date of Rule: July 18, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Recruitment of rainbow trout has been poor in recent years. Rainbows are growing larger, faster than in the past, as a result the 13" minimum size

restriction no longer protects first time spawners resulting in anglers harvesting fish that had not had an opportunity to reproduce. The minimum size limit needs to be adjusted accordingly. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-1900A Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Ross Lake (Whatcom Co.) Effective July 18, 2015, until further notice, in waters of Ross Lake, the daily limit for Rainbow trout is one fish per day, minimum size 16 inches in length. Brook Trout no minimum size, five fish per day.

WSR 15-15-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-210—Filed July 16, 2015, 11:57 a.m., effective July 16, 2015, 11:57 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Extends this week's fishery to include Thursday, July 16. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries and the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason forecast for summer Chinook is 108,000 fish, and 35,000 harvestable fish are available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5, June 10 and July 13, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

Date Adopted: July 16, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: Immediately until 6:00 p.m. July 16, 2015

(b) Gear: Gillnets. 7-inch minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

(b) Area: Drano Lake, Wind River and Klickitat River.

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

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately through July 31, 2015. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100D Columbia River salmon seasons above Bonneville Dam. (15-200)

WSR 15-15-117
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-211—Filed July 16, 2015, 2:32 p.m., effective July 20, 2015]

Effective Date of Rule: July 20, 2015.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500C; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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 Marine Area 2 recreational fishery is projected to take the remaining quota in the northern nearshore area by the end of the day on Sunday, July 19. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500D Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective July 20, 2015, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1:** Closed

(2) **Catch Record Card Area 1 (Nearshore fishery):** Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 124°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon).

(a) Open seven days per week until further notice.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2:** Closed.

(a) **Catch Record Card Area 2 (Northern Nearshore fishery): Closed.** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates:

47°31.70' N. lat, 124°37.03' W. long

47°25.67' N. lat, 124°34.79' W. long

47°12.82' N. lat, 124°29.12' W. long

47°58.00' N. lat, 124°24.24' W. long

(b) It is permissible to take, retain and possess lingcod seaward of the 30 fathom line on any day open to the primary halibut fishery as provided in subsection (3) above.

(4) **Catch Record Card Areas 3 through 13 - Closed**

(5) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(6) Unless otherwise amended, all other permanent rules remain in effect.

(7) It is unlawful to land halibut in a port within an area closed to halibut fishing.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 20, 2015:

WAC 220-56-25500C Halibut—Seasons—Daily and possession limits. (15-173)

WSR 15-15-118
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-212—Filed July 16, 2015, 2:33 p.m., effective July 16, 2015, 2:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for sea urchins.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Harvestable surpluses of green sea urchins exist in the districts specified to allow for commercial harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

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

(1) The following areas are open to green sea urchin harvest seven days-per-week: district 1 and district 2.

(2) It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

Purpose: The department is updating the rate table contained in WAC 388-105-0005 in accordance with the 2015-2017 operating budget.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

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 budget raised rates, and the table must reflect that.

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

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

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

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

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

Date Adopted: July 13, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-03-113, filed 1/21/14, effective 2/21/14)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and assisted living facilities contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

WSR 15-15-124

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 16, 2015, 4:35 p.m., effective July 16, 2015, 4:35 p.m.]

Effective Date of Rule: Immediately upon filing.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((65.58)) <u>67.22</u>	\$((71.00)) <u>72.64</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>
A Med	\$((70.97)) <u>72.74</u>	\$((76.39)) <u>78.16</u>	\$((52.71)) <u>54.03</u>	\$((52.71)) <u>54.03</u>	\$((53.84)) <u>56.53</u>
A High	\$((79.58)) <u>81.57</u>	\$((85.00)) <u>86.99</u>	\$((57.85)) <u>59.30</u>	\$((57.85)) <u>59.30</u>	\$((60.10)) <u>63.11</u>
B Low	\$((65.58)) <u>67.22</u>	\$((71.00)) <u>72.64</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((73.13)) <u>74.96</u>	\$((78.55)) <u>80.39</u>	\$((58.92)) <u>60.39</u>	\$((58.92)) <u>60.39</u>	\$((60.39)) <u>63.41</u>
B Med-High	\$((82.76)) <u>84.83</u>	\$((88.18)) <u>90.25</u>	\$((62.62)) <u>64.19</u>	\$((62.62)) <u>64.19</u>	\$((64.62)) <u>67.85</u>
B High	\$((87.10)) <u>89.28</u>	\$((92.52)) <u>94.70</u>	\$((71.52)) <u>73.31</u>	\$((71.52)) <u>73.31</u>	\$((73.71)) <u>77.40</u>
C Low	\$((70.97)) <u>72.74</u>	\$((76.39)) <u>78.16</u>	\$((52.71)) <u>54.03</u>	\$((52.71)) <u>54.03</u>	\$((53.84)) <u>56.53</u>
C Med	\$((79.58)) <u>81.57</u>	\$((85.00)) <u>86.99</u>	\$((66.05)) <u>67.70</u>	\$((66.05)) <u>67.70</u>	\$((68.42)) <u>71.84</u>
C Med-High	\$((98.96)) <u>101.43</u>	\$((104.38)) <u>106.85</u>	\$((87.89)) <u>90.09</u>	\$((87.89)) <u>90.09</u>	\$((89.26)) <u>93.72</u>
C High	\$((99.94)) <u>102.44</u>	\$((105.36)) <u>107.86</u>	\$((88.73)) <u>90.95</u>	\$((88.73)) <u>90.95</u>	\$((90.49)) <u>95.01</u>
D Low	\$((73.13)) <u>74.96</u>	\$((78.55)) <u>80.38</u>	\$((71.09)) <u>72.87</u>	\$((71.09)) <u>72.87</u>	\$((69.72)) <u>73.21</u>
D Med	\$((81.20)) <u>83.23</u>	\$((86.62)) <u>88.65</u>	\$((82.29)) <u>84.35</u>	\$((82.29)) <u>84.35</u>	\$((85.07)) <u>89.32</u>
D Med-High	\$((104.87)) <u>107.49</u>	\$((110.29)) <u>112.91</u>	\$((104.52)) <u>107.13</u>	\$((104.52)) <u>107.13</u>	\$((102.12)) <u>107.23</u>
D High	\$((112.97)) <u>115.79</u>	\$((118.39)) <u>121.21</u>	\$((112.97)) <u>115.79</u>	\$((112.97)) <u>115.79</u>	\$((116.10)) <u>121.91</u>
E Med	\$((136.43)) <u>139.84</u>	\$((141.85)) <u>145.26</u>	\$((136.43)) <u>139.84</u>	\$((136.43)) <u>139.84</u>	\$((140.04)) <u>147.04</u>
E High	\$((159.89)) <u>163.89</u>	\$((165.31)) <u>169.31</u>	\$((159.89)) <u>163.89</u>	\$((159.89)) <u>163.89</u>	\$((163.99)) <u>172.19</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Med	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.64)) <u>51.91</u>	\$((50.64)) <u>51.91</u>	\$((51.75)) <u>54.34</u>
A High	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((55.18)) <u>56.56</u>	\$((55.18)) <u>56.56</u>	\$((56.96)) <u>59.81</u>
B Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((55.82)) <u>57.22</u>	\$((55.82)) <u>57.22</u>	\$((57.24)) <u>60.10</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((82.80)) <u>84.75</u>	\$((59.33)) <u>60.81</u>	\$((59.33)) <u>60.81</u>	\$((61.30)) <u>64.37</u>
B High	\$((84.95)) <u>87.07</u>	\$((89.87)) <u>91.99</u>	\$((69.51)) <u>71.25</u>	\$((69.51)) <u>71.25</u>	\$((71.66)) <u>75.24</u>
C Low	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.85)) <u>52.12</u>	\$((50.85)) <u>52.12</u>	\$((52.13)) <u>54.74</u>
C Med	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((65.21)) <u>66.84</u>	\$((65.21)) <u>66.84</u>	\$((66.78)) <u>70.12</u>
C Med-High	\$((95.71)) <u>98.10</u>	\$((100.63)) <u>103.02</u>	\$((81.69)) <u>83.73</u>	\$((81.69)) <u>83.73</u>	\$((83.02)) <u>87.17</u>
C High	\$((96.67)) <u>99.09</u>	\$((101.59)) <u>104.01</u>	\$((86.87)) <u>89.04</u>	\$((86.87)) <u>89.04</u>	\$((88.01)) <u>92.41</u>
D Low	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((70.12)) <u>71.87</u>	\$((70.12)) <u>71.87</u>	\$((68.21)) <u>71.62</u>
D Med	\$((79.00)) <u>80.98</u>	\$((83.92)) <u>85.90</u>	\$((80.65)) <u>82.67</u>	\$((80.65)) <u>82.67</u>	\$((82.81)) <u>86.95</u>
D Med-High	\$((101.44)) <u>103.98</u>	\$((106.36)) <u>108.90</u>	\$((101.95)) <u>104.50</u>	\$((101.95)) <u>104.50</u>	\$((99.04)) <u>103.99</u>
D High	\$((109.88)) <u>112.63</u>	\$((114.80)) <u>117.55</u>	\$((109.88)) <u>112.63</u>	\$((109.88)) <u>112.63</u>	\$((112.36)) <u>117.98</u>
E Med	\$((132.21)) <u>135.52</u>	\$((137.13)) <u>140.44</u>	\$((132.21)) <u>135.52</u>	\$((132.21)) <u>135.52</u>	\$((135.15)) <u>141.91</u>
E High	\$((154.54)) <u>158.40</u>	\$((159.46)) <u>163.32</u>	\$((154.54)) <u>158.40</u>	\$((154.54)) <u>158.40</u>	\$((157.94)) <u>165.84</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Med	\$((63.43)) <u>65.02</u>	\$((68.67)) <u>70.26</u>	\$((49.62)) <u>50.86</u>	\$((49.62)) <u>50.86</u>	\$((50.72)) <u>53.26</u>
A High	\$((77.43)) <u>79.37</u>	\$((82.67)) <u>84.61</u>	\$((54.30)) <u>55.66</u>	\$((54.30)) <u>55.66</u>	\$((55.93)) <u>58.73</u>
B Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((74.04)) <u>75.76</u>	\$((54.79)) <u>56.16</u>	\$((54.79)) <u>56.16</u>	\$((56.20)) <u>59.01</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((83.12)) <u>85.07</u>	\$((58.22)) <u>59.68</u>	\$((58.22)) <u>59.68</u>	\$((60.12)) <u>63.13</u>
B High	\$((84.95)) <u>87.07</u>	\$((90.19)) <u>92.31</u>	\$((65.77)) <u>67.41</u>	\$((65.77)) <u>67.41</u>	\$((67.84)) <u>71.23</u>
C Low	\$((63.43)) <u>65.02</u>	\$((68.67)) <u>70.26</u>	\$((49.62)) <u>50.86</u>	\$((49.62)) <u>50.86</u>	\$((50.72)) <u>53.26</u>
C Med	\$((77.43)) <u>79.37</u>	\$((82.67)) <u>84.61</u>	\$((61.66)) <u>63.20</u>	\$((61.66)) <u>63.20</u>	\$((64.27)) <u>67.48</u>
C Med-High	\$((95.71)) <u>98.10</u>	\$((100.95)) <u>103.34</u>	\$((78.58)) <u>80.54</u>	\$((78.58)) <u>80.54</u>	\$((79.90)) <u>83.90</u>
C High	\$((96.67)) <u>99.09</u>	\$((101.91)) <u>104.33</u>	\$((82.13)) <u>84.18</u>	\$((82.13)) <u>84.18</u>	\$((83.30)) <u>87.47</u>
D Low	\$((68.80)) <u>70.52</u>	\$((74.04)) <u>75.76</u>	\$((66.30)) <u>67.96</u>	\$((66.30)) <u>67.96</u>	\$((64.57)) <u>67.80</u>
D Med	\$((79.00)) <u>80.98</u>	\$((84.24)) <u>86.22</u>	\$((76.26)) <u>78.17</u>	\$((76.26)) <u>78.17</u>	\$((78.37)) <u>82.29</u>
D Med-High	\$((101.44)) <u>103.98</u>	\$((106.68)) <u>109.22</u>	\$((96.38)) <u>98.79</u>	\$((96.38)) <u>98.79</u>	\$((93.72)) <u>98.41</u>
D High	\$((103.88)) <u>106.48</u>	\$((109.12)) <u>111.72</u>	\$((103.88)) <u>106.48</u>	\$((103.88)) <u>106.48</u>	\$((106.30)) <u>111.62</u>
E Med	\$((124.99)) <u>128.11</u>	\$((130.23)) <u>133.35</u>	\$((124.99)) <u>128.11</u>	\$((124.99)) <u>128.11</u>	\$((127.84)) <u>134.23</u>
E High	\$((146.10)) <u>149.75</u>	\$((151.34)) <u>154.99</u>	\$((146.10)) <u>149.75</u>	\$((146.10)) <u>149.75</u>	\$((149.39)) <u>156.86</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 15-15-134
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE
 [Filed July 17, 2015, 2:10 p.m., effective July 17, 2015, 2:10 p.m.]
 Effective Date of Rule: Immediately upon filing.

Purpose: The department has a crucifer quarantine in place to protect parts of five counties in northwestern Washington, important brassica vegetable seed production areas, from the introduction of black leg and black rot pathogens. This emergency rule will add eastern Washington to the reg-

ulated area, and is being adopted at the request of stakeholders to address concerns that black leg could be introduced prior to permanent rule making taking effect.

All other requirements and provisions within chapter 16-301 WAC will remain in effect. The department is pursuing permanent rule making that will include the same or similar rule language as this emergency rule.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-505, 16-301-515, 16-301-520, 16-301-525, 16-301-530, 16-301-540, 16-301-545, 16-301-550, and 16-301-580.

Statutory Authority for Adoption: RCW 15.49.005, 17.24.041.

Other Authority: Chapter 34.05 RCW.

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

Reasons for this Finding: A public hearing was held on July 7, 2015, for permanent rules on this subject. Public comments were received at that time that will prompt the department to continue the rule-making process with additional language and another public hearing. Stakeholders are concerned that the black leg virus may be introduced into Washington before permanent rule making can be completed and have requested an emergency rule to provide protection until permanent rules are adopted.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 9, 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 2, Amended 9, Repealed 0.

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

Date Adopted: July 17, 2015.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-495 Definitions. Definitions for some terms in this chapter can be found in chapter 15.49 RCW and chapter 16-301 WAC. In addition, the following definitions apply to this chapter:

"Approved treatment methods" include hot water, hot chlorine or any other methods that can eliminate the presence of regulated pathogens.

"Crucifer" means all plants in the family Brassicaceae (also known as Cruciferae) and specifically includes all *Brassica* species, *Raphanus sativus* - Radish, *Sinapis alba* and other mustards.

"Crucifer production" means any planting of crucifer seed or seedlings for the purpose of producing seed, oil, commercial vegetables or cover crops.

"Crucifer seed" includes any part of a plant capable of propagation including, but not necessarily limited to, seeds, roots, and transplants.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Dormant seed" means viable true seed that displays a delay in or lack of germination when provided favorable germination conditions for the type of seed in question.

"Owner" means the person having legal ownership, possession or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, grower, seed dealer, landowner or their agent.

"Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

"Regulated area" means those geographic areas that are protected from the introduction of specified plant pests by the provisions of this quarantine.

"Regulated article" means, with the exception of the exemptions listed in WAC 16-301-525(4), all crucifer seed; seedlings; roots; transplants intended for seed production, oil production, commercial vegetable production or cover crop use; and crop residue remaining from the harvest of infected crucifer plants.

"Seed lot" means a designated quantity of seed that is uniquely identified by a lot number.

"Seed program" means the Washington state department of agriculture seed program.

"Trial ground" means a specific parcel of land approved by the director for experimental or limited production or increase of crucifer seed and for planting seed lots whose quantity of seed is insufficient to allow for pathological testing.

"True seed" means a mature fertilized ovule consisting of an embryo, with or without an external food reserve enclosed by a seed coat.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-505 Diseases regulated by this chapter.

(1) **"Regulated diseases"** means those bacterial and fungal diseases of crucifers listed in this section and any new variations or strains of these diseases.

(2) **"Regulated pathogens"** means those bacterial and fungal organisms identified as the ~~(causal)~~ causal agents for the diseases listed in this section.

(3) The following bacterial and fungal diseases of crucifers, and any new strains or variations of these diseases are regulated by this chapter:

Common Name	Scientific Name
Black leg of Crucifers	<i>Phoma lingam</i>
Black rot	<i>Xanthomonas campestris pv. campestris</i>

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-515 Crucifer seed quarantine—Quarantined area. (1) The quarantine area for the crucifer seed quarantine includes all Washington state counties except Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Kittitas, Klickitat, Lewis, Lincoln, Okanogan, Pend Oreille, Skagit, Snohomish, (~~and~~) Spokane, Stevens, Walla Walla, Whatcom, Whitman, and Yakima counties.

(2) Regulated articles imported into Washington state must comply with the regulations of this chapter before transport into (~~the~~) a regulated area. No additional requirements apply within the quarantine area but all regulated articles transported into (~~the~~) a regulated area must comply with the regulations of this chapter.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-520 Crucifer seed quarantine—Regulated areas. Two regulated areas are established for the crucifer quarantine, one in western Washington and one in eastern Washington. Each regulated area has specific requirements and prohibitions related to the regulated articles.

(1) The regulated area in western Washington for this crucifer seed quarantine includes Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

(2) The regulated area in eastern Washington for this crucifer seed quarantine includes Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-525 Crucifer seed quarantine within the regulated areas—Exemptions. This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550;

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of regulated diseases as required in WAC 16-301-530; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated areas if the seedlings are free of regulated diseases as required in WAC 16-301-530.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse;

(6) Seed lots with a maximum weight of five pounds that were in inventory prior to January 1, 2007.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-530 Planting crucifer seed in the western Washington regulated area—Requirements. (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the western Washington regulated area.

(b) Any seed of a Brassica (~~(or)~~), Raphanus, Sinapis species or any other genera in the Brassicaceae family planted or established in the western Washington regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the western Washington regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the western Washington regulated area unless accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the seed program.

(b) Larger containers must bear a label issued by the seed program indicating that the seed is in compliance with this chapter.

NEW SECTION

WAC 16-301-531 Planting crucifer seed in the eastern Washington regulated area—Requirements. (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the eastern Washington regulated area.

(b) Any seed of a Brassica, Raphanus, Sinapis species or any other genera in the Brassicaceae family to be planted in the eastern Washington regulated area must be laboratory

tested and found to be free from black leg of crucifers (*Phoma lingam*).

(2) Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the Brassicaceae family from an origin outside the eastern Washington regulated area to be planted in the eastern Washington regulated area must be treated with either a fungicide appropriate to control black leg, hot water or other treatments authorized by the department.

(3) Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the Brassicaceae family to be planted in the eastern Washington regulated area must be tagged with a tag issued by the department indicating that the seed has met the requirements of this chapter.

NEW SECTION

WAC 16-301-533 Requirements for planting crucifer seed in the eastern Washington regulated area. Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the Brassicaceae family to be planted in the eastern Washington regulated area must be tagged with a tag issued by the department indicating that the seed has met the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-540 Crucifer transplants grown in greenhouses in the regulated areas—Requirements. (1) All crucifer transplants produced in greenhouses in the regulated areas must be subjected to pest control procedures that reduce the presence of diseases or insects that may inhibit identifying regulated diseases.

(2) The interiors of greenhouses in the regulated areas used to produce crucifer transplants must be free of crucifer weeds.

(3) One hundred meter buffers, free of crucifer weeds, must surround all greenhouses in the regulated areas used to produce crucifer transplants.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-545 Crucifer seed lots that test positive for any regulated disease—Requirements. (1) If a crucifer seed lot tests positive for any regulated disease, the infected seed lot may be treated with an approved seed treatment.

(2) After treatment, the seed lot must be tested for the presence of regulated diseases using appropriate pathological testing methods.

(3) If the pathological testing yields negative test results, the seed lot will be considered in compliance with this chapter.

(4) It is a violation of this chapter to plant seed in the regulated areas that tests positive for any regulated disease subsequent to any approved treatment method.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-550 Planting seed in ((*) the western Washington regulated area—Protocols when certain documentation is unavailable. When no documentation exists verifying that a crucifer seed lot is free from regulated diseases, the following protocols must be followed before the seed is planted in the western Washington regulated area:

(1) A crucifer seed lot will be classified as a suspect seed lot if the seed lot lacks the documentation verifying that the lot complies with the crucifer seed quarantine requirements of this chapter.

(2) Suspect seed lots must:

(a) Not be offered for sale in the western Washington regulated area.

(b) Be treated by an approved treatment method.

(c) Be sown in a greenhouse and the seedlings must pass inspection by seed program inspectors before transplanting to the field.

(3) Any greenhouse operation used to grow crucifer seedlings for transplant must:

(a) Physically separate suspect seed lots from other crucifer production within that greenhouse.

(b) Monitor and document the location and identity of each suspect seed lot during production.

(4) It is a violation of this chapter for seedlings from a suspect seed lot to be topped, clipped, chopped or undergo any other treatment to toughen them or reduce their size.

(5) All seedlings from a suspect seed lot that exhibit symptoms of regulated diseases must be physically separated from asymptomatic transplants in that lot.

(6) Before shipping seedlings from a suspect seed lot, the seedlings must be inspected by seed program inspectors for the presence of regulated diseases.

(a) If no symptoms of regulated diseases are detected during this inspection, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the western Washington regulated area.

(b) If seedlings display symptoms of regulated diseases, laboratory testing for the diseases is mandatory.

(c) If seedlings from a suspect seed lot test negative for regulated pathogens after appropriate pathological testing, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the western Washington regulated area.

(d) If the presence of a regulated disease is confirmed by laboratory testing, all seedlings from a suspect seed lot may be subject to a quarantine order or destruction order under WAC 16-301-570.

(7) Any crucifer seed production fields, plant beds, or greenhouse production that will be planted with or receives production from suspect seed lots that are determined to be free from regulated diseases under subsection (6) of this section must be entered into the Washington state phytosanitary inspection program as required under WAC 16-301-235.

(8)(a) It is a violation of this chapter to plant seedlings from a suspect seed lot that tests positive for any regulated disease in the western Washington regulated area.

(b) Any suspect seed lot testing positive for any regulated disease may be subject to a quarantine order or a destruction order under WAC 16-301-570.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-580 Diseased crucifer seeds and infected fields—Regulations. (1) When the director determines that a field is infected with a regulated pathogen and threatens to infect other fields, the director may issue a notice of destruction prescribing control measures or other requirements needed to prevent the infection of adjacent properties.

(2) Unless the crop is within two weeks of harvest, any crucifer crop within ~~((the))~~ a regulated area that is infected with a regulated pathogen may be subject to immediate destruction, in part or in total. The owner is responsible for the expenses incurred to destroy a diseased crucifer crop.

(3) The following requirements apply to crops that are within two weeks of harvest:

(a) Residues must be destroyed or incorporated into the ground immediately after harvest;

(b) Harvested seed must be isolated from other seed lots until it is treated with hot water and/or chlorine seed treatments;

(c) Harvest equipment must be steam cleaned before entering any other fields; and

(d) WSDA personnel in consultation with WSU extension personnel must monitor these postharvest activities.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-301-500 Crucifer articles regulated by this chapter.

**WSR 15-15-135
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-213—Filed July 17, 2015, 2:27 p.m., effective July 18, 2015]

Effective Date of Rule: July 18, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000M; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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: (See attachment) [no further information supplied by agency].

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

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

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

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

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

Date Adopted: July 17, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000S Columbia—Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 220-310-200 and WAC 220-56-282, effective July 18, 2015, until further notice, it is unlawful to fish for or retain sturgeon in the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Mainstem Columbia and its tributaries from Bonneville Dam upstream to Chief Joseph Dam.

(2) Snake River and its tributaries from the mouth upstream to the Washington/Oregon border.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 18, 2015:

WAC 220-310-20000M Columbia River—Freshwater exceptions to statewide rules. (15-147)

**WSR 15-15-136
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-214—Filed July 17, 2015, 3:22 p.m., effective July 18, 2015]

Effective Date of Rule: July 18, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-185.

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 East Fork Lewis and Washougal rivers are experiencing extremely low flows and above normal water temperatures that may affect survival of Endangered Species Act listed wild summer steelhead handled during this fishery. Water temperatures can be higher on the lower river, necessitating a complete closure. The upper river remains open to fishing in the morning hours when water temperatures are cooler.

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

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

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

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

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

Date Adopted: July 17, 2015.

Joe Stohr
for Philip Anderson
[J. W. Unsworth]
Director

NEW SECTION

WAC 220-310-18500C Southwest—Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 220-310-185, effective July 18, 2015, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) East Fork Lewis River from mouth upstream to top boat ramp at Lewisville Park: Closed to all angling.

(2) East Fork Lewis River from top boat ramp at Lewisville Park upstream to 400 feet below Horseshoe Falls: Closed to all angling daily from 2 pm. to one hour before official sunrise.

(3) Washougal River from mouth upstream to Mt. Norway Bridge: Closed to all angling.

(4) Washougal River from Mt. Norway Bridge upstream to the Salmon Falls Bridge: Closed to all angling daily from 2 pm. to one hour before official sunrise.

(a) Night closure and anti-snagging rules will be in effect. Only fish hooked inside the mouth may be retained.

WSR 15-15-137 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-203—Filed July 17, 2015, 3:29 p.m., effective July 18, 2015]

Effective Date of Rule: July 18, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500Y; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Closing the rivers by emergency rule is necessary as the water temperatures in the rivers are exceeding the upper limit of tolerance for sockeye and summer Chinook survival. The angling and handling of adipose present salmon at these temperatures further reduces survival after release. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 17, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500A Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective July 18, 2015, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Icicle River** - Closed to salmon fishing in those waters from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(2) **Okanogan River** - Closed to salmon fishing in those waters from the Hwy 97 bridge immediately upstream of the mouth to Zosel Dam.

(3) **Similkameen River** - Closed in those waters from the mouth upstream to Enloe Dam.

(4) **Wenatchee River** - Closed to salmon fishing in those waters from the mouth to the Icicle River Road Bridge.

(5) **Lake Wenatchee** - Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 18, 2015:

WAC 220-310-19500Y Freshwater exceptions to statewide rules—Eastside. (15-156)

WSR 15-15-138
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-204—Filed July 17, 2015, 3:32 p.m., effective July 18, 2015]

Effective Date of Rule: July 18, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Fishing restrictions are necessary as the afternoon water temperatures in rivers and creeks are approaching or exceeding the upper limit for survival of trout and salmon. Most of these waters do not benefit from cold water releases from the Bureau of Reclamation storage reservoirs. These waters receive significant fishing effort that will subject trout to handling stress or injury caused by elevated water temperature and extreme low flow conditions. At this time, the Ahtanum Creek and Teanaway River basins are at critical low flow condition and require a complete fishing closure to protect vulnerable fish stocks. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: July 17, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500B Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective July 18, 2015, until further notice, currently open fisheries for game fish in the Yakima River basin are modified as follows:

(1) Ahtanum Creek, including North and Middle Forks: Closed

(2) Naches River from Tieton River to Bumping River/Little Naches River: Closed 2:00 p.m. until midnight.

(3) Rattlesnake Creek (mainstem): Closed 2:00 p.m. until midnight.

(4) Little Naches River: Closed.

(5) Teanaway River, including West, Middle and North Forks: Closed

WSR 15-15-139
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-216—Filed July 17, 2015, 3:44 p.m., effective July 17, 2015, 3:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing for Puget Sound salmon.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-47-42800L; and amending WAC 220-47-428.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Harvestable surplus of pink salmon is available in Puget Sound Salmon Management and Catch Reporting Area 6D for a commercial beach seine opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 17, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-42800L Beach seine—Open periods.

Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas

6D

Open Periods

7 AM - 7 PM daily
July 20 through July 24 and July 27
through July 31

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

(b) Observers are required and fishers must contact the department prior to fishing.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. July 31, 2015:

WAC 220-47-42800L Beach seine—Open periods.

**WSR 15-15-140
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-206—Filed July 17, 2015, 3:52 p.m., effective July 18, 2015]

Effective Date of Rule: July 18, 2015.

Purpose: Amend recreational fishing rules for low water and elevated water temperatures.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Drought and the resulting low water flows have had detrimental impacts to these waters. Water temperatures in the rivers are exceeding the upper limit of tolerance for salmonids and native game fishes. Angling and handling of Endangered Species Act listed and/or wild salmon at these temperatures further reduces survival after release. The daily "hoot owl" closures are intended to reduce angling pressure and potential fish mortality by removing angling during periods of the day when fish are stressed from elevated temperatures. In addition, some streams are closed to angling because of record low flows due to lack of winter snowpack and rainfall. Stream flows have fallen low enough to concentrate fish into small areas of refugia where they are highly susceptible to angling, natural predation and poaching. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 17, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000C Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective July 18, 2015, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Raging River** (King Co.) From the mouth upstream closed to all fishing until further notice.

(2) **Skykomish River** (Snohomish Co.) From mouth upstream closed to all fishing, except the section around Reiter Ponds remains open from the Gold Bar/Big Eddy Access (Hwy. 2 Bridge) upstream to the confluence of the North and South Forks until further notice.

(3) **North Fork Skykomish River** (Snohomish Co.) From mouth upstream including all tributaries closed to all fishing daily 2 PM to midnight until further notice.

(4) **South Fork Skykomish River** (Snohomish/King Co.) From Sunset Falls upstream and all tributaries, including the Beckler, Foss, Miller and Rapid rivers and their tributaries closed to all fishing daily 2 PM to midnight until further notice.

(5) **Wallace River** (Snohomish Co.). From the mouth upstream including all tributaries closed to all fishing until further notice.

(6) **Stillaguamish River** (Skagit/Snohomish Co.) From Marine Drive upstream including the North and South Forks and all tributaries closed to all fishing until further notice.

(7) **South Fork Nooksack** (Whatcom Co.) From the mouth to Skookum Creek, and from Wanlick Creek to headwaters including Wanlick and all tributaries closed to all fishing until further notice.

(8) **Sauk River** (Skagit/Snohomish Co.) From the confluence with the Suiattle River upstream including North Fork to the falls and South Fork to headwaters closed to all fishing daily 2 PM to midnight until further notice.

(9) **Suiattle River** (Skagit Co.) Tributaries Buck, Downey and Sulpher Creeks closed to all fishing until further notice.

(10) **Samish River** (Skagit Co.) From I-5 to headwaters and Friday Creek from the mouth upstream closed to all fishing daily 2 PM to midnight until further notice.

WSR 15-15-141
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-215—Filed July 17, 2015, 4:00 p.m., effective July 18, 2015]

Effective Date of Rule: July 18, 2015.

Purpose: Amend recreational fishing rules for low water and elevated water temperatures.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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: Drought and the resulting low water flows have had detrimental impacts to these waters. Water temperatures in the rivers are exceeding the upper limit of tolerance for salmonids and native game fishes. Angling and handling of Endangered Species Act listed and/or wild salmon at these temperatures further reduces survival after release. The daily "hoot owl" closures are intended to reduce angling pressure and potential fish mortality by removing angling during periods of the day when fish are stressed from elevated temperatures. In addition, some streams are closed to angling because of record low flows due to lack of winter snowpack and rainfall. Stream flows have fallen low enough to concentrate fish into small areas of refugia where they are highly susceptible to angling, natural predation and poaching. There is insufficient time to adopt permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 17, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500C Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective July 18, 2015, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Walla Walla River** (Walla Walla Co.) from McDonald Road Bridge to Oregon State Boundary - closed daily 2 PM to Midnight until further notice.

(2) **Touchet River** (Columbia/Walla Walla Co.) from mouth to the confluence of the North and South forks - closed daily 2 PM to Midnight until further notice.

(a) **North Fork Touchet River** from mouth to Spangler Creek - closed daily 2 PM to Midnight until further notice.

(b) **North Fork Touchet River** upstream from the confluence of Spangler Creek - closed to fishing until further notice

(c) **South Fork Touchet River** from mouth to Griffen Fork and above Griffen fork - closed to all fishing until further notice.

(d) **Wolf Fork Touchet River** from mouth to Coates Creek and Robinson Fork - closed to all fishing until further notice.

(3) **Tucannon River** (Columbia/Garfield Co.) From Highway 12 Bridge to Cow Camp Bridge - closed daily 2 PM to midnight until further notice

(4) **Asotin Creek and tributaries** (Asotin Co.) from mouth to headwaters - closed to all fishing until further notice

(5) **Spokane River** (Spokane/Lincoln Co.) from upstream Boundary at Plese Flats Day Use Area to Idaho State Boundary - closed daily 2 PM to midnight until further notice.

(a) **Spokane River tributaries, including Little Spokane River and tributaries** (Spokane/Pend Oreille/Stevens Co.) from State Route 25 Bridge upstream to Monroe Street Dam - closed daily 2 PM to midnight until further notice.

(6) **Colville River and all tributaries** (Stevens Co.) from mouth to headwaters - closed daily 2 PM to midnight until further notice.

(7) **Kettle River and all tributaries** (Ferry Co.) from Barstow Bridge to headwaters, all portions contained within the United States - closed to fishing until further notice.

(8) **Sullivan Creek and all tributaries** (Pend Oreille Co.) from mouth to headwaters - closed daily 2 PM to midnight until further notice.

WSR 15-15-159
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-217—Filed July 21, 2015, 2:15 p.m., effective July 21, 2015, 2:15 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Sets a 3.5 day treaty commercial gill net season for salmon. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries and the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason forecast for summer Chinook is one hundred twenty thousand fish, and nearly forty thousand harvestable fish are available to the treaty tribes. Sockeye also remain available for harvest based on the upgraded run size of five hundred seven thousand five hundred sockeye. Enough harvestable sockeye remain available that removing the seven inch minimum mesh size restriction is warranted. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5, June 10, and July 20, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River

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

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

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

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

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

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

Date Adopted: July 21, 2015.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100F Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possess-

ing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: 6:00 a.m. July 21 until 6:00 p.m. July 24, 2015

(b) Gear: Gillnets. No minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

(b) Area: Drano Lake, Wind River and Klickitat River.

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

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU

with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately through July 31, 2015. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam. (15-209)

WSR 15-15-160 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-218—Filed July 21, 2015, 2:15 p.m., effective July 21, 2015, 2:15 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95

Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets a mainstem commercial fishing period for summer Chinook. The inseason summer Chinook forecast is one hundred twenty thousand fish. A run of this size allocates nearly three thousand eight hundred Chinook available for harvest in mainstem commercial fisheries. The inseason sockeye forecast is five hundred seven thousand five hundred fish. A run of this size allocates one thousand five hundred sockeye available for harvest in mainstem commercial fisheries. The sanctuaries now include the larger "B" sanctuaries in an effort to further protect fish returning [to] the natal tributaries given the usually [unusually] high river temperature and low flows. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 20, 2015. There is insufficient time to promulgate permanent rules.

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal

Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 21, 2015.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000U Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

In the mainstem Columbia River:

- (1) **Dates:** 7:00 PM July 21 to 7:00 AM July 22, 2015.
- (2) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).
- (3) **Sanctuaries:** Elochoman-B, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.
- (4) **Allowable Possession:** Chinook, sockeye and shad.
- (5) **Gear:** Drift nets only. 8-inch minimum mesh size.
- (6) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)).
- (7) **Multi-Net Rule:** It is permissible to possess onboard a vessel nets not specifically authorized for use in these areas so long as they are properly stored (WAC 220-33-001(2)).
- (8) **Lighted Buoys:** Nets fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is fished while attached to a boat, then one lighted buoy on the opposite end of the net from the boat is required.

WSR 15-15-164
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-219—Filed July 21, 2015, 4:17 p.m., effective July 21, 2015, 4:17 p.m.]

Effective Date of Rule: Immediately upon filing.
Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This emergency rule change is necessary to remain within Chinook catch guidelines for Areas 3 and 4. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 21, 2015.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62000K Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 3:** From July 24 through September 30: Open; daily limit of 2 salmon of which not more than one may be a Chinook salmon, plus two additional pink salmon; release wild coho.

(2) **Catch Record Card Area 4:**

(a) Effective immediately until further notice, the waters south of a line from Kydaka Point to Shipwreck Point are closed.

(b) From July 24 through September 21: Open; daily limit of 2 salmon of which not more than one may be a Chinook salmon, plus two additional pink salmon; release wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000J Coastal salmon—Saltwater seasons and daily limits. (15-11)

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.