

WSR 17-22-012
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 19, 2017, 1:40 p.m., effective October 20, 2017]

Effective Date of Rule: October 20, 2017.

Purpose: The department is amending these rules to implement the nursing facility methodology changes from SHB 1274, found in chapter 2, Laws of 2015 2nd sp. sess.

Citation of Rules Affected by this Order: New WAC 388-96-915, 388-96-916 and 388-96-917; repealing WAC 388-96-540, 388-96-552, 388-96-553, 388-96-554, 388-96-558, 388-96-559, 388-96-561, 388-96-562, 388-96-564, 388-96-565, 388-96-572, 388-96-574, 388-96-708, 388-96-744, 388-96-746, 388-96-747, 388-96-748, 388-96-759, 388-96-762, 388-96-767, 388-96-776, 388-96-783, 388-96-784 and 388-96-786; and amending WAC 388-96-010, 388-96-022, 388-96-107, 388-96-205, 388-96-208, 388-96-211, 388-96-218, 388-96-505, 388-96-525, 388-96-534, 388-96-542, 388-96-556, 388-96-560, 388-96-580, 388-96-585, 388-96-709, 388-96-710, 388-96-713, 388-96-758, 388-96-781, 388-96-782, and 388-96-901.

Statutory Authority for Adoption: RCW 74.46.800, 74.46.561(1).

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 held a number of stakeholder meetings regarding implementation of the rules. The department held a public hearing, received comments, and the program has prepared response in the concise explanatory statement. A cost-benefit analysis was also completed. The department anticipates the CR-103P will be finalized and filed before November 1, 2017. This emergency covers the time until the final becomes effective.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 22, Repealed 24.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 22, Repealed 24.

Date Adopted: October 19, 2017.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-010 Definitions. Unless the context indicates otherwise, the following definitions apply in this chapter.

"Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

- (1) Decision making;
- (2) Planning;
- (3) Evaluating performance;
- (4) Controlling resources and operations; and
- (5) External financial reporting to investors, creditors, regulatory authorities, and the public.

"Accrual method of accounting" is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

"Administration and management" means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

"Allowable costs" are documented costs that are necessary, ordinary, reasonable, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

~~("Allowable depreciation costs" are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in WAC 388-96-552.)~~

"Assignment of contract" means:

- (1) A new nursing facility licensee has elected to care for medicaid residents;
- (2) The department finds no good cause to object to continuing the medicaid contract at the facility; and
- (3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

"Bad debts" are amounts considered to be uncollectible from accounts and notes receivable.

"Banked beds" are beds removed from service under chapter 246-310 WAC.

"Beneficial owner" is:

- (1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares one or more of the following:

- (a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; ~~((and/))~~ or
- (b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

- (2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose of effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

- (3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership

interest within sixty days, including but not limited to any right to acquire:

- (a) Through the exercise of any option, warrant, or right;
- (b) Through the conversation of an ownership interest;
- (c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in (3)(a), (b), or (c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledge agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledge agreement, prior to default, does not grant to the pledgee:

- (i) The power to vote or to direct the vote of the pledged ownership interest; or
- (ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

~~("Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.)~~

"Building" means the basic structure or shell of a facility and additions thereto. All allowable sections of a building are enclosed on all sides with a roof and are permanent.

"Capital" means the component of the rate that uses a fair market rental system to set a price per bed.

"Cash method of accounting" means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

"Change of ownership" means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

(a) Changing the form of legal organization of the contractor, e.g., a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

"Charity allowance" means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

"Component rate allocation(s)" means the initial component rate allocation(s) of the rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "component rate allocation(s)," it means the initial component rate allocation(s) of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Contract" means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

"Cost report" means all schedules of a nursing facility's cost report submitted according to the department's instructions.

"Courtesy allowances" are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

"Department" means department of social and health services and its employees.

"Direct care supplies (DCS)" are those supplies:

- (1) Used by staff providing direct care to residents;
- (2) Consumed during a single accounting period; and
- (3) Expensed in that accounting period. Supplies excluded from DCS include but are not limited to the following:

- (1) medical equipment (such as IV poles);
- (2) Items covered by medicaid fee-for-service system; and
- (3) Administrative supplies used by direct care staff (such as pencils, pens, paper, office supplies, etc).

"Donated asset" means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

- (1) Made even a nominal payment in acquiring the asset; or
- (2) Used donated funds to purchase the asset.

~~("Essential community provider" means a facility that is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.)~~

"Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital defined as current assets minus current liabilities.

"Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, **"fiscal year"** may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

"Fixed equipment" means attachments to buildings including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. Generally, fixed equipment is affixed to the building and not subject to transfer.

"Gain on sale" means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

"Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

"Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

"Intangible asset" is an asset that lacks physical substance but possesses economic value.

"Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

"Joint facility costs" are any costs that benefit more than one facility, or one facility and any other entity.

~~("Large nonessential community providers" are not essential community providers and have more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.)~~

"Leasehold improvements" are betterments and additions made by the lessee to the leased property that become the property of the lessor after the expiration of the lease.

"Movable equipment" includes, but is not limited to, beds, wheelchairs, desks, and X-ray machines. The general characteristics of movable equipment are:

(1) Capable of being moved as distinguished from fixed equipment;

(2) A unit cost sufficient to justify ledger control;

(3) Sufficient size and identity to make control feasible by means of identification tags; and

(4) A minimum life of greater than one year.

"Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

"Nonadministrative wages and benefits" are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

"Nonallowable costs" are the same as **"unallowable costs."**

"Nonrestricted funds" are funds that are not restricted to a specific use by the donor, e.g., general operating funds.

"Nursing facility occupancy percentage" is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under chapter 70.38 RCW, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period.

"Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

"Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

"Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

"Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

"Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

"Recipient" means a medicaid recipient.

"Related care" means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

- (1) The director of nursing services;
- (2) Nursing direction and supervision;
- (3) Activities and social services programs;

- (4) Medical and medical records specialists.
- (5) Consultation provided by:
 - (a) Medical directors; and
 - (b) Pharmacists.

"Relative" includes:

- (1) Spouse;
- (2) Natural parent, child, or sibling;
- (3) Adopted child(~~(-or)~~), adoptive parent, or adoptive sibling;
- (4) Stepparent, stepchild, stepbrother, stepsister;
- (5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (6) Grandparent or grandchild; and
- (7) Uncle, aunt, nephew, niece, or cousin.

"Related organization" means an entity that is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity or person is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity or person has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable and exercised.

"Renovations" means the cost of the building, building improvements, leasehold improvements, and fixed equipment used to calculate a facility's age. In order to be used to calculate a facility's age, the cost of renovations in a calendar year must be \$2,000 or greater per licensed bed.

"Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

~~("Small nonessential community providers" are not essential community providers and have sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.)~~

"Start up costs" are the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start up costs include:

- (1) Administrative and nursing salaries;
- (2) Utility costs;
- (3) Taxes;
- (4) Insurance;
- (5) Repairs and maintenance; and
- (6) Training costs.

Start up costs do not include expenditures for capital assets.

"Total rate allocation" means the initial rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Unallowable costs" are costs that do not meet every test of an allowable cost.

"Uniform chart of accounts" are account titles identified by code numbers established by the department for contractors to use in reporting costs.

"Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

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

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.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-022 Due dates for cost reports. (1) The contractor (~~(shall)~~) must submit annually a complete report of costs and financial conditions of the contractor prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) The department will review the contractor's costs and financial conditions in accordance with the methodology effective at the time the contractor incurred the costs.

(3) Not later than March 31st of each year, each contractor (~~(shall)~~) must submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

~~((3))~~ (4) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor (~~(shall)~~) must submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

~~((4))~~ (5) If the cost report is not properly completed or if it is not received by the due date established in subsection ~~((2))~~ (3) or ~~((3))~~ (4) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received.

~~((5))~~ (6) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in subsection ~~((2))~~ (3) or ~~((3))~~ (4) of this section.

AMENDATORY SECTION (Amending WSR 89-01-095, filed 12/21/88)

WAC 388-96-107 Requests for extensions. (1) A contractor may request in writing an extension for submitting cost reports. Contractor requests (~~(shall)~~) must:

(a) Be addressed to the manager, (~~(residential))~~ nursing facility rates program;

(b) State the circumstances prohibiting compliance with the report due date; and

(c) Be received by the department at least ten days prior to the due date of the report.

(2) The department may grant two extensions of up to thirty days each, only if the circumstances, stated clearly, indicate the due date cannot be met and the following conditions are present:

- (a) The circumstances were not foreseeable by the provider; and
- (b) The circumstances were not avoidable by advance planning.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions. (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

- (a) Allowable costs for each year for each medicaid nursing facility are accurately reported;
- (b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;
- (c) The contractor's revenues, expenditures, ~~(and costs of the building, land, land improvements, building improvements, and movable and fixed equipment)~~ building square footage, building improvements, leasehold improvements, fixed equipment, and age are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;
- (d) The contractor is in compliance with the direct care staffing requirements found in this chapter and in chapter 74.42 RCW;

(e) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and

~~((e))~~ (f) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department ~~((shall))~~ must examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department ~~((shall))~~ must determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care ~~(, therapy care, and support services)~~ under WAC 388-96-211 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments ~~((shall))~~ must be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments ~~((shall be))~~ are subject to review under WAC 388-96-901 and 388-96-904.

(4) Audits of resident trust funds and receivables ~~((shall))~~ must be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor ~~((shall))~~ must:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

- ~~(b) ((Prepare a reconciliation of the cost report with:~~
- ~~(i) Applicable federal income and federal and state payroll tax returns; and~~
- ~~(ii) The records for the period covered by the cost report.~~
- ~~(e))~~ Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals ~~((shall))~~ must have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information; and

(c) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records ~~((shall))~~ must be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department ~~((shall))~~ must notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. (1) The methodology in subsections (2) through (6) of this section is effective for services provided on or before June 30, 2016.

(2) The department ~~((shall))~~ must reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

~~((2))~~ (3) The contractor ~~((shall))~~ must make any payment owed the department as determined by reconciliation and/or settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations

within sixty days after the department notifies the contractor of the amount owed.

~~((3))~~ (4) The department ~~((shall))~~ must pay the contractor within sixty days after it notifies the contractor of an underpayment.

~~((4))~~ (5) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest ~~((shall))~~ must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

~~((5))~~ (6) The department ~~((shall))~~ may withhold funds from the contractor's payment for services and ~~((shall))~~ may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

(7) The methodology in subsections (8) through (12) of this section is effective for services provided on or after July 1, 2016.

(8) The department must reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(9) The contractor must make any payment owed the department as determined by either reconciliation, settlement, or both at the lower of cost or rate in the direct care component rate allocation within sixty days after the department notifies the contractor of the amount owed.

(10) The department must pay the contractor within sixty days after it notifies the contractor of an underpayment.

(11) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(12) The department may withhold funds from the contractor's payment for services and may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination must delay recovery from the contractor or payment to the contractor.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates.

(1) The methodology in subsections (2) through (6) of this section is effective for services provided on or before June 30, 2016.

(2) Contractors ~~((shall))~~ must submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department ~~((shall))~~ must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

~~((2))~~ (3) Contractors ~~((shall not be))~~ are not required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

~~((3))~~ (4) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection ~~((4))~~ (5) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" ~~((shall))~~ must be defined by federal survey regulations.

~~((4))~~ (5) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, ~~((shall))~~ must be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center ~~((shall))~~ must be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection ~~((3))~~ (4) of this section, ~~((shall))~~ must be calculated and applied after all shifting is completed.

~~((5))~~ (6) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW ~~((shall))~~ represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

(7) The methodology in subsections (8) through (11) of this section is effective for services provided on or after July 1, 2016.

(8) Contractors must submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(9) Contractors are not required to refund payments made in the indirect care, capital, and quality enhancement component rates in excess of the adjusted costs of providing services corresponding to these components.

(10) The facility will return to the department any overpayment amounts in the direct care rate component that the department identifies following the examination and settlement procedures as described in this chapter. The contractor may retain any overpayment that does not exceed one percent of the facility's direct care component rate, however facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care component rate. The terms "not in substantial compliance" and "substandard quality of care" must be defined by federal survey regulations.

(11) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-218 Proposed, preliminary, and final settlements. (1) The methodology in subsections (2) through (14) of this section is effective for services provided on or before June 30, 2016.

(2) For each component rate, the department ((shall)) must calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter and chapter 74.46 RCW.

((2)) (3) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor ((shall)) must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor ((shall)) must take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

((a)) (4) The department will((: (i)) review the proposed preliminary settlement report for accuracy((:)) and

((i)) accept or reject the ((proposal of the)) contractor's proposal. If accepted, the proposed preliminary settlement report ((shall)) must become the preliminary settlement report. If rejected, the department ((shall)) must issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

((b)) (5) When the department receives the proposed preliminary settlement report((:

(i)) by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date((:or

(ii) A) When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

((c)) In its discretion, the department may designate a date later than the dates specified in this subsection ((2)(b)(i) and (ii) of this section)) to issue preliminary settlements.

((d)) (6) A contractor shall have twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ((shall)) must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement ((shall)) must be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and ((shall)) must not encompass rate or audit issues.

((e)) (7) The department ((shall)) must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

((a)) (8) The department ((shall)) must prepare a final settlement by component payment rate allocation and ((shall)) must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department ((shall)) must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department ((shall)) must compare:

((i)) (a) The payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

((i)) (b) Audited allowable costs for the reporting period; or

((iii)) (c) Reported costs for the nonaudited reporting period.

((b)) (9) A contractor ((shall have)) has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904.

Upon expiration of the twenty-eight day period, the department ~~((shall))~~ must not review a final settlement report. Any administrative review of a final settlement ~~((shall))~~ must be limited to calculation of the settlement, the application of settlement principles and rules, or both, and ~~((shall))~~ must not encompass rate or audit issues.

~~((e))~~ (10) The department ~~((shall))~~ may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

~~((4)(a))~~ (11) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

~~((b))~~ (12) The nursing facility contractor ~~((shall))~~ must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department ~~((shall))~~ must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt ~~((shall))~~ must be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance will accrue at one percent per month.

~~((e))~~ (13) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

~~((5))~~ (14) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care and support services component rates under authority of WAC 388-96-211, the following rules ~~((shall))~~ apply:

(a) Federal or state survey officials ~~((shall))~~ must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status ~~((shall))~~ must be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture ~~((shall))~~ must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture ~~((shall))~~ must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

(15) The methodology in subsections (16) through (28) of this section is effective for services provided on or after July 1, 2016.

(16) For each component rate, the department must calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter and chapter 74.46 RCW.

(17) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor must take into account all retained savings, and upper limits to rates on a cost center basis.

(18) The department will review the proposed preliminary settlement report for accuracy and accept or reject the contractor's proposal. If accepted, the proposed preliminary settlement report must become the preliminary settlement report. If rejected, the department must issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(19) When the department receives the proposed preliminary settlement report by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date. When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received. In its discretion, the department may designate a date later than the dates specified in this subsection to issue preliminary settlements.

(20) A contractor has twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement must be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and must not encompass rate or audit issues.

(21) The department must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(22) The department must prepare a final settlement by component payment rate allocation and must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department must compare:

(a) The payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

(b) Audited allowable costs for the reporting period; or

(c) Reported costs for the nonaudited reporting period.

(23) A contractor has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department must not review a final settlement report. Any administrative review of a final settlement must be limited to calculation of the settlement, the application of settlement principles and rules, or both, and must not encompass rate or audit issues.

(24) The department may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medic-aid recipient days.

(25) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

(26) The nursing facility contractor must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt must be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance will accrue at one percent per month.

(27) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

(28) In determining whether a facility has forfeited unused rate funds in its direct care component rate under authority of WAC 388-96-211, the following rules apply:

(a) Federal or state survey officials must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status must be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if

the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-505 Offset of miscellaneous revenues.

(1) The methodology in subsections (2) through (5) of this section is effective for services provided on or before June 30, 2016.

(2) The contractor (~~(shall)~~) must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (e.g., purchase discounts, refunds of allowable costs or rebates) other than through the contractor's normal billing for care services; except, the department (~~(shall)~~) must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

(~~(2)~~) (3) The contractor (~~(shall)~~) must reduce allowable costs for hold-bed revenue in the support services, operations and property rate components only. In the support services rate component, the amount of reduction (~~(shall)~~) must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days. In the operations rate component, the amount of the reduction shall be determined by dividing a facility's allowable operation costs by total adjusted patient days and multiplying the result by total hold-room days. In the property rate component, the amount of reduction (~~(shall)~~) must be determined by dividing allowable property costs by the total adjusted patient days and multiplying the result by total hold-room days.

(~~(3)~~) (4) Where goods or services are sold, the amount of the reduction (~~(shall be)~~) is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it (~~(shall be)~~) is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs or rebates are received, the amount of the reduction (~~(shall be)~~) is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, (~~(shall)~~) must be offset against allowable costs in the year the contractor actually receives the benefits.

(~~(4)~~) (5) Only allowable costs (~~(shall)~~) may be recovered under this section. Costs allocable to activities or services not included in nursing facility services, e.g., costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services, are nonallowable costs.

(6) The methodology in subsections (7) through (10) of this section is effective for services provided on or after July 1, 2016.

(7) The contractor must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (e.g., purchase discounts, refunds of allowable costs or rebates) other than through the

contractor's normal billing for care services; except, the department must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

(8) The contractor must reduce allowable costs for hold-bed revenue in the indirect care rate component only. The amount of reduction must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days.

(9) Where goods or services are sold, the amount of the reduction is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs or rebates are received, the amount of the reduction is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, must be offset against allowable costs in the year the contractor actually receives the benefits.

(10) Only allowable costs may be recovered under this section. Costs allocable to activities or services not included in nursing facility services, e.g., costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services, are nonallowable costs.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-525 Education and training. (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs. Cost of training for which the nursing facility is reimbursed outside the payment rate is an unallowable cost.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. Expenses of training programs for other nonemployees will not be allowable costs.

(3) Expenses for travel, lodging, and meals associated with education and training ~~((in the states of Idaho, Oregon, and Washington and the province of British Columbia))~~ are allowable if the expenses meet the requirements of this chapter.

~~(4) ((Except travel, lodging, and meal expenses, education and training expenses at sites outside of the states of Idaho, Oregon, and Washington and the province of British Columbia are allowable costs if the expenses meet the requirements of this chapter.~~

~~(5))~~ Costs designated by this section as allowable ~~((shall be))~~ are subject to any applicable cost center limit established by this chapter.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-534 Joint cost allocation disclosure (JCAD). (1) The contractor ~~((shall))~~ must disclose to the department:

(a) The nature and purpose of all costs representing allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) The contractor ~~((shall))~~ must demonstrate in such disclosure:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

~~(3) ((The contractor shall make such disclosure not later than September 30th for the following year, except,))~~ Upon receipt of a disclosure, the department must review the joint cost allocation disclosure (JCAD) and either approve or deny the disclosure. Once a JCAD is submitted and approved, it is valid until changed or amended.

~~(4)~~ A new contractor ((shall)) must submit the first year's disclosure together with the submissions required by WAC 388-96-026.

~~(5)~~ Within this section, the meaning of the:

(a) "Effective date" is the date the department will recognize allocation per an approved JCAD; and

(b) "Implementation date" is the date the facility will begin or began incurring joint facility costs or the allocation of joint costs has changed.

~~((4))~~ The department shall approve or reject the JCAD not later than December 31 of each year for all JCADs received by September 30th. The effective date of an approved JCAD received:

~~(a)~~ By September 30th is January 1st.

~~(b)~~ After September 30th shall be ninety days from the date the JCAD was received by the department.

~~(5))~~ (6) The contractor ((shall)) must submit to the department for approval an amendment or revision to an approved JCAD at least thirty days prior to the implementation date of the amendment or revision. For amendments or revisions received less than thirty days before the implementation date, the effective date of approval will be thirty days from the date the JCAD is received by the department.

~~((6))~~ (7) When a contractor, who is not currently incurring joint facility costs, begins to incur joint facility costs during the calendar year, the contractor ((shall)) must provide the information required in subsections (1) and (2) of this section at least ninety days prior to the implementation date. If the JCAD is not received ninety days before the implementation date, the effective date of the approval will be ninety days from the date the JCAD is received by the department.

~~((7))~~ (8) Joint facility costs not disclosed, allocated, and reported in conformity with this section are unallowable costs. Joint facility costs incurred before the effective dates ((of subsections (4), (5), and (6) of this section)) are unallowable. Costs disclosed, allocated, and reported in conformity with a department-approved JCAD must undergo review and be determined allowable costs for the purposes of rate setting and audit.

Reviser's note: The spelling 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.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-542 Home office or central office. (1) ~~((When calculating the median bid on home and central office costs and determining which home and central office costs to test against the median bid,))~~ The department will include all allowable, reported home/central office costs including all costs that are ~~((nonduplicative,))~~ documented, ordinary, reasonable, necessary, and related to the provision of medical and personal care services to authorized patients.

(2) ~~((a))~~ Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, ~~((shall))~~ must not be included in ~~((net invested funds or in))~~ the calculation of ~~((property payment))~~ the capital component for the nursing facility except as permissible under WAC 388-96-915.

~~((b))~~ (3) The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.

~~((c))~~ (4) The allocated costs ~~((of (b) of this))~~ in subsection (3) of this section may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

~~((3))~~ (5) Home office or central office costs must be allocated and reported in conformity with the department-approved JCAD methodology as required by WAC 388-96-534.

~~((4))~~ Home office or central office costs are subject to the limitation specified in WAC 388-96-585.)

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-556 Initial cost of operation. (1) The necessary ~~((and))~~, ordinary, and reasonable one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility ~~((shall be))~~ are allowable costs. These expenses ~~((shall be))~~ are limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs ~~((shall))~~ include, but ~~((not be))~~ are not limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training ~~((; except, that they shall exclude))~~. Start-up costs do not include expenditures for capital assets. ((These)) Start-up costs ((will be)) are allowable in the ((operations)) indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the ~~((operations))~~ indirect care cost center if they are amortized over a period of not less

than sixty months beginning with the month in which the first patient is admitted for care.

~~((4))~~ Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.)

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-560 Land, improvements ~~((—Depreciation. Land is not depreciable. The cost of))~~ Land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading ~~((of a nondepreciable nature))~~, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-580 Operating leases of office equipment. (1) Rental costs of office equipment under arm's-length operating leases ~~((shall be))~~ are allowable to the extent such costs are necessary, ordinary, and related to patient care.

(2) The department ~~((shall))~~ must pay office equipment rental costs in the ~~((operations))~~ indirect component rate allocation. Office equipment may include items typically used in administrative or clerical functions such as telephones, copy machines, desks and chairs, calculators and adding machines, file cabinets, typewriters, and computers.

~~((3))~~ The department shall not pay for depreciation of leased office equipment.)

AMENDATORY SECTION (Amending WSR 15-09-025, filed 4/7/15, effective 5/8/15)

WAC 388-96-585 Unallowable costs. (1) Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) Unallowable costs include but are not limited to the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;

(c) Costs associated with a capital expenditure ~~((subject to section 1122 approval (part 100, Title 42 C.F.R.)))~~ if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given

timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable only when:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts (~~shall~~) consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future~~(-);~~;

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions~~(-excluding dues;-)~~ to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. This does not include membership dues;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) ~~((Televisions acquired prior to July 1, 2001;~~

~~(v)))~~ Federal, state, and other income taxes;

~~((w)))~~ (v) Costs of special care services except where authorized by the department;

~~((x)))~~ (w) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

~~((y)))~~ (x) Expenses of profit-sharing plans;

~~((z)))~~ (y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

~~((aa)))~~ (z) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

~~((bb)))~~ (aa) All expenses of maintaining professional licenses or membership in professional organizations;

~~((cc)))~~ (bb) Costs related to agreements not to compete;

~~((dd)))~~ (cc) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

~~((ee)))~~ (dd) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

~~((ff)))~~ (ee) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

~~((gg)))~~ (ff) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department;

~~((hh)))~~ (gg) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

~~((ii)))~~ (hh) All rental or lease costs other than those provided for in WAC 388-96-580;

~~((jj)))~~ (ii) Postsurvey charges incurred by the facility ~~((as a result of subsequent inspections))~~ under ~~((RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year))~~ RCW 18.51.060;

~~((kk)))~~ (jj) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classifica-

tion at the same nursing facility, as reported in the most recent cost report period;

~~((kk))~~ (kk) For all partial or whole rate periods after July 17, 1984, costs of ~~(land and)~~ depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

~~((mm))~~ (ll) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

~~((nn))~~ (mm) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

~~((oo))~~ (nn) Travel expenses that are not necessary, ordinary, and related to resident care;

~~((pp))~~ (oo) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

~~((qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;~~

~~((rr))~~ (pp) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

~~((ss))~~ (qq) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

~~((tt))~~ (rr) Costs and fees associated with filing a petition for bankruptcy;

~~((uu))~~ (ss) All advertising or promotional costs, except reasonable costs of help wanted advertising;

~~((vv))~~ (tt) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

~~((ww) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;~~

~~((xx))~~ (uu) Tax expenses that a nursing facility has never incurred;

~~((yy))~~ (vv) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

~~((zz))~~ (ww) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department ~~((shall be))~~ are unallowable; and

~~((aaa))~~ (xx) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment)~~((-))~~;

(yy) Costs related to a nursing assistant certified training program;

(zz) Effective July 1, 2012, payments made relating to the safety net assessment; and

(aaa) Building renovations, building improvements, or leasehold improvements that require preapproval from the department of health and were not preapproved.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds ~~((by means other than "banking" pursuant to chapter 70.38 RCW))~~. (1) For the purpose of minimum occupancy capital calculation banked beds are included in the number of licensed beds. The department will recalculate a contractor's prospective medicaid payment rate when the contractor permanently reduces the number of its licensed beds and:

(a) Provides a copy of the new bed license, if issued, documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any, and the letter from the department of health (DOH) confirming the number of beds relinquished and the date they were relinquished; and

(b) Requests a rate revision.

(2) The department will revise medicaid rates in accordance with this chapter and chapter 74.46 RCW using the facility's decreased licensed bed capacity to calculate minimum occupancy for rate setting.

(3)~~((a))~~ When the new license is effective the first day of the month or when the DOH letter confirms the beds were relinquished the first day of the month, the revised prospective payment rate will be effective the first day of the month~~((-))~~.

~~((b))~~ (4) When the new license is effective after the first day of the month or when the DOH letter confirms the beds were relinquished after the first day of the month, the revised prospective payment rate will be effective the first day of the month following the month the new license was effective or the DOH letter confirmed beds were relinquished after the first day of the month.

~~((a))~~ (5) The department will recalculate a nursing facility's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds including banked bed times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times the number of calendar days in the cost report period on which the rate being recalculated is based.

~~((b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:~~

(i) Essential community providers—Eighty-five percent.

(ii) Small nonessential community providers—Ninety percent.

(iii) Large nonessential community providers—Ninety-two percent.

(e) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.

(5)) (6) The revised prospective medicaid payment rate will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums, unless otherwise specified in this section.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-710 Prospective payment rate for new contractors. (1) The department will establish an initial prospective medicaid payment rate for a new contractor as defined under WAC 388-96-026 within sixty days following the new contractor's application and approval for a license to operate the facility under chapter 18.51 RCW. The rate will take effect as of the effective date of the contract, except as provided in this section, and will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth.

(2) ((Except for quarterly updates per RCW 74.46.501 (7)(e), the rate established for a new contractor as defined in WAC 388-96-026 (1)(a) or (b) will remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate thereafter will be cost rebased only as provided in this chapter and chapter 74.46 RCW.

(3)) To set the initial prospective medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department will:

(a) Determine ((whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency)) the direct care rate by multiplying the industry median by the appropriate county wage index by the facility's medicaid average case mix index (MACMI) and if the facility does not have a MACMI, the department will use the facility industry MACMI;

(b) ((Select all nursing facilities from the department's records of all the current medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained)) Assign the new provider the indirect price based rate;

(c) ((Based on the information for the nursing facilities selected under subsection (3)(b) of this section and available to the department on the day the new contractor began participating in the medicaid payment rate system at the facility, rank from the highest to the lowest the component rate allo-

cation in direct care, therapy care, support services, and operations cost centers and based on this ranking:

(i) Determine the middle of the ranking and then identify the rate immediately above the median for each cost center identified in subsection (3)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center;

(ii) Set the new contractor's nursing facility component rate allocation for therapy care, support services, and operations at the "selected rate";

(iii) Set the direct care rate using data from the direct care "selected" rate facility identified in (c) of this subsection as follows:

(A) The cost per case mix unit will be the rate base allowable case mixed direct care cost per patient day for the direct care "selected" rate facility, whether or not that facility is held harmless under WAC 388-96-728 and 388-96-729, divided by the facility average case mix index per WAC 388-96-741;

(B) The cost per case mix unit determined under (c)(iii)(A) of this subsection will be multiplied by the medicaid average case mix index per WAC 388-96-740. The product will be the new contractor's direct care rate under case mix; and

(C) The department will not apply RCW 74.46.506 (5)(k) to any direct care rate established under subsection (5)(e) or (f) of this section. When the department establishes a new contractor's direct care rate under subsection (5)(e) or (f) of this section, the new contractor is not eligible to be paid by a "hold harmless" rate as determined under RCW 74.46.506 (5)(k);

(iv) Set the property rate in accordance with the provisions of this chapter and chapter 74.46 RCW; and

(v) Set the financing allowance and variable return component rate allocations in accordance with the provisions of this chapter and chapter 74.46 RCW. In computing the variable return component rate allocation, the department will use for direct care, therapy care, support services and operations rate allocations those set pursuant to subsection (3)(c)(i), (ii) and (iii) of this section.

(d) Any subsequent revisions to the rate component allocations of the sample members will not impact a "selected rate" component allocation of the initial prospective rate established for the new contractor under this subsection.

(4) For the WAC 388-96-026 (1)(a) or (b) new contractor, the department will establish rate component allocations for:

(a) Direct care, therapy care, support services and operations based on the "selected rates" as determined under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program;

(b) Property in accordance with the provisions of this chapter and chapter 74.46 RCW using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the

requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received;

(e) Variable return in accordance with the provisions of this chapter and chapter 74.46 RCW using the "selected rates" established under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(d) Financing allowance using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component allocation will remain zero until the information is received.

(5) The initial prospective payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) will be established under subsections (3) and (4) of this section. If the WAC 388-96-026 (1)(a) or (b) contractor's initial rate is set:

(a) Between July 1, 2000 and June 30, 2001, the department will set the new contractor's rates for:

(i) July 1, 2001 using the July 1, 2001 rates for direct care, therapy care, support services, and operations of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(a)(i) of this section;

(ii) July 1, 2002 rate using 2001 cost report data; and

(iii) All July 1 rates following July 1, 2002 in accordance with this chapter and chapter 74.46 RCW;

(b) Between July 1, 2001, and June 30, 2002, the department will set the new contractor's rates for:

(i) July 1, 2002 using July 1, 2002 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(b)(i) of this section;

(ii) July 1, 2003 rate by rebasing using 2002 cost report data in accordance with this chapter and chapter 74.46 RCW; and

(iii) All July 1 rates following July 1, 2003 in accordance with this chapter and chapter 74.46 RCW; or

(c) Between July 1, 2002, and June 30, 2003, the department will set the contractor's rates for:

(i) July 1, 2003 using July 1, 2003 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsection (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(c)(i) of this section;

(ii) July 1, 2004 by rebasing using 2003 cost report data; and

(iii) All July 1 rates following July 1, 2004 in accordance with this chapter and chapter 74.46 RCW.

(6) For the WAC 388-96-026 (1)(c) new contractor, the initial prospective payment rate will be the last prospective payment rate the department paid to the medicare contractor operating the nursing facility immediately prior to the effective date of the new medicare contract or assignment. If the WAC 388-96-026 (1)(c) contractor's initial rate is set:

(a) Between October 1, 1998 and June 30, 1999, the department will not rebase the contractor's rate for:

(i) July 1, 1999; and

(ii) July 1, 2000;

(b) Between July 1, 1999 and June 30, 2000, the department will for:

(i) July 1, 2000 not rebase the new contractor's rate;

(ii) July 1, 2001 rebase the new contractor's rate using twelve months of cost report data derived from the old contractor's and the new contractor's 1999 cost reports; and

(iii) July 1, 2002 not rebase the new contractor's rate; and

(iv) July 1, 2003 not rebase the new contractor's rate;

(c) Between July 1, 2000 and June 30, 2001, the department will for:

(i) July 1, 2001 rebase the new contractor's rate using the old contractor's 1999 twelve month cost report;

(ii) July 1, 2002 not rebase the new contractor's rate;

(iii) July 1, 2003 not rebase the new contractor's rate; or

(d) Between July 1, 2001 and June 30, 2002, the department will for:

(i) July 1, 2002 not rebase the new contractor's rate;

(ii) July 1, 2003 not rebase the new contractor's rate; and

(iii) July 1, 2004 rebase the new contractor's rate using the new contractor's 2002 cost report containing at least six month's data.

(7)) Determine a capital rate once the facility has submitted square footage and age information and the department accepts it; and

(d) Use the facility's available centers for medicare and medicaid date for the three quarter period currently being measured by the department to determine a quality enhancement rate and if no data is available, the department will not pay a quality enhancement.

(3) A prospective payment rate set for all new contractors will be subject to adjustments for economic trends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

((8) For a WAC 388-96-026 (1)(a), (b) or (c) new contractor, the medicare case mix index and facility average case mix index will be determined in accordance with this chapter and chapter 74.46 RCW.))

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-713 Rate determination. (1) Each nursing facility's medicaid payment rate for services provided to medical care recipients will be determined, adjusted and updated prospectively as provided in this chapter and in chapter 74.46 RCW. The department will calculate any limit, ~~((it,))~~ and/or median only when it rebases each nursing facility's July 1st medicaid payment rate in accordance with chapter 74.46 RCW and this chapter.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Contractors submitting correct and complete cost reports by March 31st, ~~((shall))~~ **must** be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

(4) In setting rates, the department will use the greater of actual days from the cost report period on which the rate is based or days calculated at minimum occupancy pursuant to chapter 74.46 RCW.

~~((5) Adjusted cost report data from 1999 shall be used for July 1, 2001 through June 30, 2005 direct care, therapy care, support services, and operations component rate allocations.))~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-758 Add-on for low-wage workers. (1) The department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on pursuant to subsection (7) of this section. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2008, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;
- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that receives a low-wage add-on ~~((shall))~~ **must** report to the department its expenditure of that add-on by:

- (a) Completing Cost Report Schedule L 1; and
- (b) Returning it to the department by January 31st.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31st indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1st. For nursing home contractors that do not respond by May 31st indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1st.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-781 Exceptional care rate add-on—Covered medicaid residents. A nursing facility (NF) may receive an increase in its direct care ~~((and/or therapy component))~~ rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to the NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care and/or therapy payment;

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS ((2)) 3.0 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care ((and/or therapy)) payment.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-782 Exceptional ~~((therapy care and exceptional))~~ direct care—Payment. (1) For WAC 388-96-781(1) residents, the department will pay the Oregon medicaid rate.

(2) For WAC 388-96-781 (4), (5)~~((and)),~~ (6), and residents, the department may establish a rate add-on that when added to the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

~~((3)(a) Costs related to payments resulting from increases in direct care component rates under subsection (2) of this section shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care shall be for rate setting, settlement, and other purposes deemed appropriate by the department; or~~

~~(b) Costs related to payments resulting from increases in therapy care component rates under subsection (2) of this section shall not be offset against the facility's examined, allowable therapy care costs, for each report year or partial period such increases are paid.)~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-901 Disputes. (1) When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor ~~((shall))~~ must pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

- (i) Determining a nursing facility payment rate;
- (ii) Calculating a nursing facility settlement;
- (iii) Imposing a civil fine on the nursing facility;
- (iv) Suspending payment to a nursing facility; or
- (v) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

- (i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;
- (ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments, which ~~((shall))~~ must be limited to separate administrative review under the provisions of WAC 388-96-905;

(ii) ~~((Quarterly and))~~ Semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;

(iv) Actions taken under exceptional direct ~~((and therapy))~~ care program codified at WAC 388-96-781 and 388-96-782;

(v) Actions taken under WAC 388-96-218 (2)(c)~~((and~~

~~(vi) Actions taken under WAC 388-96-786)).~~

(2) The administrative review process prescribed in WAC 388-96-904 ~~((shall))~~ must not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits of a claim or to make a record for subsequent judicial review or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer ~~((shall))~~ must dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by Title 42 U.S.C. Sec. 1396a~~(())~~(a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and ~~((disability services))~~ long-term support administration~~((, for example, entitlement to or payment for durable medical equipment or other services)).~~

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the nursing facility medicaid payment system or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor ~~((may))~~ must not use this section or WAC 388-96-904 for such purposes. This prohibition ~~((shall apply))~~ applies irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

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

NEW SECTION

WAC 388-96-915 Capital component—Square footage. (1) Allowable nursing home square footage is the external dimensions of the space building utilized and licensed as a nursing home less all unallowable square footage as out-

lined in subsection (2) of this section. Allowable nursing home square footage includes the following:

(a) All necessary, ordinary, and reasonable space on the campus or adjacent to the campus utilized by the residents and staff of the nursing home including in administrative and support capacities; and

(b) Basements to the extent they are utilized for administrative or support functions including the storage of equipment and records.

(2) Unallowable nursing home square footage includes, but is not limited to:

(a) Courtyards or other areas not surrounded by four walls and a contiguous roof;

(b) Patios and decks; and

(c) Off-site storage space.

(3) Off-site administrative square footage is allowable to the extent it is:

(a) Allocated in accordance with an approved joint cost allocation disclosure as outlined in WAC 388-96-534;

(b) Not otherwise unallowable under subsection (2) of this section; and

(c) Used for administrative purposes.

(4) Off-site administrative square footage is allowable up to ten percent of the combined total allowable square footage. Any square footage over ten percent of the combined total allowable square footage is unallowable.

(5) In order to be allowable, all space must be identified on a site plan, blueprint, or county assessment identifying the gross external square footage.

NEW SECTION

WAC 388-96-916 Capital component—Facility age.

(1) Facility age is based on the completion date of the original structure as adjusted for renovations as defined in WAC 388-96-020.

(2) For the cost report period ending December 31, 2014, facility age will be calculated by identifying the square footage and date placed into service for the original structure and renovations.

(3) Beginning with rates paid on July 1, 2016, the average age of a facility is the age as calculated on the calendar year 2014 cost report adjusted by renovations reported in 2015.

(4) Beginning with rates paid on July 1, 2017, the average age of a facility will be adjusted on July 1st of each year based on renovations from the prior calendar year cost reporting period.

(5) Average age is calculated in accordance with RCW 74.46.561 (5)(e).

NEW SECTION

WAC 388-96-917 Direct care—County wage information. (1) The department must calculate a county wide wage index each rebase year by utilizing the most recent average wage data available from the federal bureau of labor statistics for registered nurses, licensed practical nurses, and certified nursing assistants.

(2) For each county, the department must calculate an average combined wage for all three disciplines based on the

percentage of total wages by discipline from the prior year cost report. Each wage must be multiplied by the relative utilization percentage for that discipline. The total of all three disciplines is the average wage in that county.

(3) The department must calculate the statewide average combined wage for all three disciplines based on the average percentage of total wages by discipline from the prior year cost report.

(4) The county index is determined by dividing the county average wage in a given county by the statewide average wage.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-96-540 Will the department allow the cost of an administrator-in-training?

WAC 388-96-552 Depreciable assets.

WAC 388-96-553 Capitalization.

WAC 388-96-554 Expensing.

WAC 388-96-558 Depreciation expense.

WAC 388-96-559 Cost basis of land and depreciation base.

WAC 388-96-561 Cost basis of land and depreciation base—Donated or inherited assets.

WAC 388-96-562 Depreciable assets—Disposed—Retired.

WAC 388-96-564 Methods of depreciation.

WAC 388-96-565 Lives.

WAC 388-96-572 Handling of gains and losses upon retirement of depreciable assets—Other periods.

WAC 388-96-574 New or replacement construction—Property tax increases.

WAC 388-96-708 Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate.

WAC 388-96-744 How will the department set the therapy care rate and determine the median cost limit per unit of therapy?

WAC 388-96-746 How much therapy consultant expense for each therapy type will the department allow to be added to the total allowable one-on-one therapy expense?

WAC 388-96-747 Constructed, remodeled or expanded facilities.

WAC 388-96-748 Financing allowance component rate allocation.

WAC 388-96-759	Standards for low-wage workers add-on.
WAC 388-96-762	Allowable land.
WAC 388-96-767	Appraisal values.
WAC 388-96-776	Add-ons to the property and financing allowance payment rate—Capital improvements.
WAC 388-96-783	Certificate of capital authorization (CCA).
WAC 388-96-784	Expense for construction interest.
WAC 388-96-786	Pay for performance add-on.

WSR 17-23-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-304—Filed November 3, 2017, 9:55 a.m., effective November 6, 2017]

Effective Date of Rule: November 6, 2017.

Purpose: Amends the rules for commercial sea urchin season.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000A; and amending WAC 220-340-750.

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 open the commercial sea urchin season because harvestable surpluses of sea urchin exist in the districts specified. 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 the Request of a Non-governmental 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: November 3, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000B Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective November 6, 2017, 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 for red sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, and District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122°35 minutes west longitude to 47°14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122°41 minutes west longitude to 47°16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 6, 2017:

WAC 220-340-75000A Commercial sea urchin fisheries.
(17-256)

WSR 17-23-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-305—Filed November 3, 2017, 9:57 a.m., effective November 4, 2017]

Effective Date of Rule: November 4, 2017.

Purpose: Reopens the lower Samish River to recreational fishing.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000Y.

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 reopen the lower portion of the Samish River. This area was closed to all fishing with filing WSR 17-21-020 to facilitate achieving broodstock collection needs for fall Chinook at the Samish Hatchery. These broodstock needs have now been achieved. 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 the Request of a Non-governmental 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: November 3, 2017.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective November 4, 2017:

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. (17-277)

WSR 17-23-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-306—Filed November 3, 2017, 9:59 a.m., effective November 4, 2017]

Effective Date of Rule: November 4, 2017.

Purpose: Amends recreational fishing rules in the Quillayute River system.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000P and 220-312-02000Q; and amending WAC 220-312-020.

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 reopen the fishing on the Quillayute River system which was closed by WSR 17-22-062. The fishing closure on the Quillayute River system has allowed additional Chinook salmon to pass through to spawning areas. Resumed fishing is expected to result in few impacts to Chinook. Requiring release of all Chinook is expected to further minimize these impacts.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: November 3, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000Q Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-312-020, effective November 4 through November 30, 2017, it is unlawful to retain Chinook salmon in the following waters. Unless otherwise amended all permanent rules remain in effect:

- (1) Bogachiel River (Clallam County)
- (2) Calaway River (Clallam County)
- (3) Dickey River (Clallam County)
- (4) Quillayute River (Clallam County)
- (5) Sol Duc River (Clallam County)

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

REPEALER

The following section of the Washington Administrative Code is repealed effective November 4, 2017:

WAC 220-312-02000P Freshwater exceptions to statewide rules—Coastal. (17-291)

The following section of the Washington Administrative Code is repealed effective December 1, 2017:

WAC 220-312-02000Q Freshwater exceptions to statewide rules—Coastal.

WSR 17-23-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-308—Filed November 3, 2017, 4:21 p.m., effective November 6, 2017]

Effective Date of Rule: November 6, 2017.

Purpose: Amends commercial purse seine and gillnet fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000E and 220-354-16000E; and amending WAC 220-354-120 and 220-354-160.

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 is needed to close the commercial salmon fisheries in Salmon Management and Catch Reporting Areas 12, 12B, and 12C as the nontreaty share at the current inseason run size has been harvested. Additionally, in Salmon Management and Catch Reporting Areas 10 and 11 the purse seine schedule has been adjusted per inseason discussions with the comanagers. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 3, 2017.

Joe Stohr
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-354-12000E Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
10, 11	Open 11/6 from 8 AM - 6 PM Closed 11/7
12, 12B, 12C	Closed 11/7

NEW SECTION

WAC 220-354-16000E Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B, 12C	Closed 11/6

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 PM November 7, 2017:

WAC 220-354-12000E Purse seine—Open periods.

WAC 220-354-16000E Gillnet—Open periods.

WSR 17-23-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-307—Filed November 6, 2017, 1:47 p.m., effective November 8, 2017]

Effective Date of Rule: November 8, 2017.

Purpose: Amend recreational fishing regulations in the Dungeness River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000R; and amending WAC 220-312-020.

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 is needed to close salmon fishing in the Dungeness River because coho returns to the hatchery are well behind the broodstock numbers needed to maintain hatchery coho releases that will provide future coho angling opportunity. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental 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: November 6, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000R Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-312-020, effective November 8 through November 30, 2017, it is unlawful to fish for or possess salmon in those waters of the Dungeness River downstream of the hatchery intake pipe.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2017:

WAC 220-312-02000R Freshwater exceptions to statewide rules—Coastal.

WSR 17-23-034

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-310—Filed November 7, 2017, 4:11 p.m., effective November 8, 2017]

Effective Date of Rule: November 8, 2017.

Purpose: Amends commercial sea urchin fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000B; and amending WAC 220-340-750.

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 is needed to close commercial sea urchin harvest in District 2 to prevent overharvest of green sea urchins. Harvestable surpluses of sea urchins exist in the districts which remain open. 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 the Request of a Non-governmental 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: November 7, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000C Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, 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 for red sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, and District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122°35 minutes west longitude to 47°14 minutes north latitude, and thence projected true west

to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122°41 minutes west longitude to 47°16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 8, 2017:

WAC 220-340-75000B Commercial sea urchin fisheries.
(17-304)

**WSR 17-23-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-311—Filed November 7, 2017, 4:51 p.m., effective November 8, 2017]

Effective Date of Rule: November 8, 2017.

Purpose: Amends commercial purse seine and gillnet fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000F and 220-354-16000F; and amending WAC 220-354-120 and 220-354-160.

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 is needed to close the commercial salmon fisheries in Salmon Management and Catch Reporting Areas 12, 12B and 12C as the non-treaty share has been harvested under the current comanager agreed to inseason run-size. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 7, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000F Purse seine—Open periods.

Notwithstanding the provisions of WAC 220-354-120, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B, 12C	Closed

NEW SECTION

WAC 220-354-16000E Gillnet—Open periods.

Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B, 12C	Closed

**WSR 17-23-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-312—Filed November 9, 2017, 5:00 p.m., effective November 9, 2017, 5:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial salmon fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000G and 220-354-16000G; and amending WAC 220-354-120 and 220-354-160.

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 is needed to close the commercial salmon fisheries in Salmon Management and Catch Reporting Areas 10 and 11 as the nontreaty share at the current inseason run size is expected to have been harvested. Additionally, an emergency rule is needed to close Puget Sound Salmon Management and Catch Reporting Area 8D for commercial fishing due to concerns over the Tulalip Hatchery not reaching egg-take goals for chum. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 9, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000G Purse seine—Open periods. Notwithstanding the provisions of Chapter 220-354-120 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
8D	Closed
10, 11	Closed

NEW SECTION

WAC 220-354-16000G Gillnet—Open periods. Notwithstanding the provisions of Chapter 220-354-160 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
8D	Closed
10, 11	Closed

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 PM December 1, 2017:

WAC 220-354-12000G Purse seine—Open periods.

WAC 220-354-16000G Gillnet—Open periods.

**WSR 17-23-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-309—Filed November 9, 2017, 5:03 p.m., effective November 13, 2017]

Effective Date of Rule: November 13, 2017.

Purpose: Amends rules for Puget Sound recreational salmon fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000I; and amending WAC 220-313-060.

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: Washington department of fish and wildlife and tribal comanagers agreed to a limited number of Chinook encounters retaining or releasing fish that anglers are allowed in Marine Areas 8-1 through 10. Preliminary estimates indicate that there is a high risk of reaching the allowable limit of total Chinook encounters prior to the scheduled end of the season due to high sublegal encounters. This emergency rule is needed to modify these fisheries to stay within the agreed to number of encounters and increasing the possibility of providing season-long fisheries which will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental 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: November 9, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-313-06000J Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, effective November 13, 2017, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) **Marine Areas 8-1, 8-2 and 9, excluding Edmonds Public Fishing Pier:** Closed to salmon angling.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 13, 2017:

WAC 220-313-06000I Puget Sound salmon—Saltwater seasons and daily limits. (17-209)

**WSR 17-23-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-313—Filed November 9, 2017, 10:26 p.m., effective November 9, 2017, 10:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial salmon fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000F, 220-354-16000F, 220-354-12000H and 220-354-16000H; and amending WAC 220-354-120 and 220-354-160.

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 is needed to repeal the current closure and open commercial salmon fisheries consistent with the permanent rules in Salmon Management and Catch Reporting Areas 12 and 12B to target the remaining nontreaty chum share available at the current inseason run size. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 4.

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: November 9, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000H Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of Chapter 220-354-120 WAC, effective immediately through November 14, 2017 it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area	Open Periods
12C	Closed

NEW SECTION

WAC 220-354-16000H Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of Chapter 220-354-160 WAC, effective immediately through November 14, 2017 it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area	Open Periods
12C	Closed

REPEALER

The following sections of the Washington Administrative Code are repealed effective immediately:

WAC 220-354-12000F Purse seine—Open periods.

WAC 220-354-16000F Gillnet—Open periods.

The following sections of the Washington Administrative Code are repealed effective 11:59 PM November 14, 2017:

WAC 220-354-12000H Purse seine—Open periods.

WAC 220-354-16000H Gillnet—Open periods.

**WSR 17-23-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-314—Filed November 12, 2017, 3:53 p.m., effective November 12, 2017, 3:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial salmon fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000H, 220-354-16000H, 220-354-12000I and 220-354-16000I; and amending WAC 220-354-120 and 220-354-160.

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 is needed to delay the scheduled opening to provide the required notice to the comanagers under the Puget Sound Salmon Management Plan. Salmon Management and Catch Reporting Areas 12, 12B, and 12C are open to target the remaining nontreaty chum share available at the estimated inseason run size. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 4.

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: November 12, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000I Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B, and 12C	Tuesday November 14 7AM - 5PM

NEW SECTION

WAC 220-354-16000I Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area	Open Periods
12, 12B, and 12C	Wednesday November 15 6AM-6PM

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-354-12000H Purse seine—Open periods.

WAC 220-354-16000H Gillnet—Open periods.

The following sections of the Washington Administrative Code are repealed effective 11:59 p.m. November 16, 2017:

WAC 220-354-12000I Purse seine—Open periods.

WAC 220-354-16000I Gillnet—Open periods.

**WSR 17-23-069
EMERGENCY RULES
DEPARTMENT OF
NATURAL RESOURCES**

[Filed November 13, 2017, 11:05 a.m., effective November 13, 2017, 11:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The 2017 legislative [legislature] amended portions of RCW 42.56.120 pertaining to fee charges for public record copies. EHB 1595 requires that a rule be in place if an agency needs to use the statutory public records fee schedule, rather than charging for actual costs. Department of natural resources (DNR) lacks sufficient data to use the actual cost method this time. This rule specifies that DNR will utilize the legislature's statutory default fee schedule, effective July 23, 2017. DNR has filed a proposed rule making under WSR 17-22-019 to begin the permanent rule-making process for these and other changes to chapter 332-10 WAC.

Citation of Rules Affected by this Order: Amending WAC 332-10-170.

Statutory Authority for Adoption: RCW 42.56.120.

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: Change in state law, RCW 42.56.120(3), EHB 1595, effective July 23, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 13, 2017.

Brule Burkhart
Deputy Supervisor
for Administration

AMENDATORY SECTION (Amending WSR 92-22-076, filed 11/2/92, effective 12/3/92)

WAC 332-10-170 Fees for performing the following service. Charges for the following categories of services will be collected and transmitted to the state treasurer for deposit:

(1) Twenty-five dollars for the approval of any assignment of contract of sale, assignment of lease, assignment of bill of sale or assignment of right of way.

(2) Twenty-five dollars for the division of contracts or leases pursuant to RCW 79.01.236.

(3) Five dollars for certification of any document.

(4) ~~(Twenty-five cents per page, plus postage if mailed, for copies of documents which do not exceed 8-1/2 x 14 inches in size. May be copied by requestor or agency staff.~~

~~Up to one dollar per page, plus postage if mailed, for copies of documents when copying would unreasonably disrupt the operations of the agency, requiring uninterrupted, long-term use of agency copy equipment. Actual costs incident to such copying will be charged. Copies not to exceed 8-1/2 x 14 inches in size.~~

~~(5) Copies of documents or nonstandard items beyond the size of documents set forth in subsection (4) of this section (e.g., computer printouts, films, recordings or maps) will be charged on the basis of the cost of reproduction including the time of department personnel as determined by the department of natural resources.)~~ For public records requests: Adopting an actual cost rule would be unduly burdensome. DNR does not currently have accurate data regarding the many specific cost elements associated with public records production, nor does it have the resources or appropriated funds to conduct an actual cost study. DNR cannot divert resources away from other critical agency programs in order to perform such a cost study. Additionally, such a study would be time consuming, and a legally suitable fee structure

is necessary to defray the costs to people of Washington associated with public records production. Therefore, DNR will use the statutory fee schedule in RCW 42.56.120(2).

**WSR 17-23-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-315—Filed November 13, 2017, 4:14 p.m., effective November 16, 2017]

Effective Date of Rule: November 16, 2017.

Purpose: Amends recreational fishing rules for the Hoko River.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

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 is necessary because hatchery steelhead smolts released in the spring of 2016 and 2017 into the Hoko River were not fin clipped. These fish will begin returning in the coming winter. Dorsal fin heights of hatchery reared steelhead are shorter than comparably sized wild steelhead. The standard of 2 1/8 inches has been used elsewhere to identify hatchery steelhead when fin clips are lacking. 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 the Request of a Non-governmental 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: November 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000S Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions

of WAC 220-312-020, effective November 16, 2017 until further notice:

It is permissible to retain steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

**WSR 17-23-075
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-316—Filed November 13, 2017, 4:16 p.m., effective November 15, 2017]

Effective Date of Rule: November 15, 2017.

Purpose: Amends recreational fishing regulations for the Dungeness River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000R.

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 is needed to reopen fishing on the Dungeness River which was closed by WSR 17-23-022. Recent rains allowed the coho needed to satisfy broodstock needs to reach the Dungeness Hatchery.

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 the Request of a Non-governmental 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: November 13, 2017.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective November 15, 2017:

WAC 220-312-02000R Freshwater exceptions to statewide rules—Puget Sound. (17-307)

**WSR 17-23-076
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-318—Filed November 13, 2017, 4:24 p.m., effective November 13, 2017, 4:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial salmon fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000I, 220-354-16000I, 220-354-12000J and 220-354-16000J; and amending WAC 220-354-120 and 220-354-160.

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 is needed to rescind the scheduled purse seine opening in filing WSR 17-23-059 for purse seines in Puget Sound Management and Catch [Catch] Reporting Area 12, 12B and 12C for November 14, 2017. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 4.

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: November 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000J Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B and 12C	Closed

NEW SECTION

WAC 220-354-16000J Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area	Open Periods
12, 12B, and 12C	Wednesday November 15 6 AM-6 PM

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-354-12000I Purse seine—Open periods. (17-314)

WAC 220-354-16000I Gillnet—Open periods. (17-314)

The following sections of the Washington Administrative Code are repealed effective 11:59 p.m. November 15, 2017:

WAC 220-354-12000J Purse seine—Open periods.

WAC 220-354-16000J Gillnet—Open periods.

WSR 17-23-078
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 14, 2017, 8:35 a.m., effective November 28, 2017]

Effective Date of Rule: November 28, 2017.

Purpose: The department is amending WAC 388-493-0010 Working family support, in order to extend the program end date from June 30, 2017, to June 30, 2019, and to include a ten thousand household program enrollment limit to the working family support program effective July 31, 2017.

These amendments are needed based on proviso language in the 2017-2019 operating budget (SSB 5883).

The department filed the proposed rule on September 28, 2017, as WSR 17-20-033, held a public hearing on November 7, 2017, and filed the permanent rule on November 9, 2017, as WSR 17-23-050. This emergency rule filing extends the emergency rule filed as WSR 17-16-130 until the permanent rule takes effect.

Citation of Rules Affected by this Order: Amending WAC 388-493-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, and 74.08.090.

Other Authority: SSB 5883.

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 2017-2019 operating budget (SSB 5883) states that the department shall adopt rules to take effect July 31, 2017, to limit the working family support program at ten thousand households. State law requires immediate adoption of the household limit, therefore requiring an emergency rule filing to update the language in WAC 388-493-0010 Working family support.

Extending the working family support end date to June 30, 2019, is necessary for the general welfare to continue accessing the additional food benefit.

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 the Request of a Non-governmental 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: November 9, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-07-012, filed 3/6/17, effective 4/6/17)

WAC 388-493-0010 Working family support. (1) What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (Department) and provides an additional monthly food benefit from May 2016 through June 30, ((2017)) 2019 to low income families who meet specific criteria. Continuance of the program beyond June 30, ((2017)) 2019 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home that is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment

hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You ~~(are)~~ may be eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent, work a minimum of thirty five hours a week, and if you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state per WAC 388-468-0005.

(4) How can I apply for working family support?

(a) The department will review your eligibility for the working family support program:

(i) When you apply for food assistance, or

(ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(5) How long can I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed above and provide current proof that you, your spouse, or co-parent works a minimum of thirty five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or WAC 388-418-0011, and you do not provide proof of the number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent, no longer work a minimum of thirty five hours a week; or

(vi) You are no longer a resident of Washington state.

(6) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month.

(b) Working family support benefits are not prorated.

(7) Enrollment in the working family support program is limited to ten thousand households per month.

WSR 17-23-082
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed November 14, 2017, 12:30 p.m., effective November 15, 2017]

Effective Date of Rule: November 15, 2017.

Purpose: The department is extending the current emergency rule for WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding?, which is being revised to align with recent changes in RCW 26.44.100 that require the department to send unfounded finding letters to subjects via mail or email instead of certified mail, return receipt requested. A public hearing on the proposed rule filed as WSR 17-21-084 is scheduled for November 21, 2017.

Citation of Rules Affected by this Order: Amending WAC 388-15-069.

Statutory Authority for Adoption: RCW 26.44.100.

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: To align with changes to state legislation. This change went into effect July 23, 2017.

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 the Request of a Non-governmental 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: November 13, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-041, filed 7/28/15, effective 8/28/15)

WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding? (1) CPS notifies the alleged perpetrator of the founded finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(2) CPS notifies the alleged perpetrator of the unfounded finding by sending the CPS finding notice via mail, to the last known address, or email. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(3) When CA is actively working with the alleged perpetrator and the certified mail sent pursuant to subsection (1) of this section is returned, CA will attempt to personally serve the CPS founded findings letter to the alleged perpetrator.

WSR 17-23-085

EMERGENCY RULES

EASTERN WASHINGTON UNIVERSITY

[Filed November 14, 2017, 3:06 p.m., effective November 14, 2017, 3:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose:

- To comply with HB 1595 and RCW 42.56.120, it is necessary to update this code;
- It is unduly burdensome for Eastern Washington University (EWU) to calculate actual costs for copying records to fulfill public records requests; and
- Pursuant to RCW 45.56.120, these changes will allow EWU to reimburse the university the costs associated with fulfilling its duties under the Public Records Act.

Citation of Rules Affected by this Order: Amending WAC 172-10-080.

Statutory Authority for Adoption: RCW 28B.35.120(12) and chapter 34.05 RCW.

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

Reasons for this Finding: To comply with HB 1595 and RCW 42.56.120.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 14, 2017.

Joseph Fuxa
Labor Relations Manager

Chapter 172-10 WAC

PUBLIC RECORDS REQUESTS

AMENDATORY SECTION (Amending WSR 14-24-034, filed 11/24/14, effective 12/25/14)

WAC 172-10-080 Costs of providing copies of public records. (1) The following copy fees and payment procedures apply to requests under chapter 42.56 RCW received on or after July 23, 2017. Pursuant to RCW 42.56.120 (2)(b), Eastern Washington University is not calculating all actual costs for copying records because to do so would be unduly burdensome as the university does not have the resources to conduct a study to determine all actual copying costs, it is difficult to calculate all costs directly incident to copying records, and to conduct such a study would interfere with other essential university functions.

(2) Costs for ~~((paper))~~ copies. The university will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The university may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract or other agreement with a re-quester. A copy of the university's fee schedule will be available on its public records website.

(3) The university may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(4) ~~There is no fee for inspecting public records. ((A requestor may obtain standard photocopies for fifteen cents per page.))~~ Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. Eastern Washington University will not charge sales tax when it makes copies of public records.

~~((2) Costs for electronic records. The cost of electronic copies of records shall be five dollars for information on a CD-ROM. The cost of scanning existing university paper or other nonelectronic records is ten cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee.))~~

(3) (5) Costs of mailing. Eastern Washington University may also charge actual costs of mailing, including the cost of the shipping container.

(4) (6) Payment. Payment may be made by cash, check, or money order to Eastern Washington University.

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

WSR 17-23-086
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 14, 2017, 4:00 p.m., effective November 18, 2017]

Effective Date of Rule: November 18, 2017.

Purpose: The department files this CR-103E rule-making order, to adopt a second emergency rule amending WAC 388-14A-4505 and 388-14A-4510 in order to implement ESHB 1814 (chapter 269, Laws of 2017), which took effect on July 23, 2017.

The division of child support (DCS) originally adopted emergency rules under WSR 17-16-026, effective July 23, 2017. That emergency rule filing expires on November 18, 2017. This second emergency filing is necessary to maintain the status quo because the effective date of the final permanent rule will not occur within the lifespan of the first emergency rule. The language in this second emergency rule filing is identical to that adopted in the first emergency rule filing.

DCS is engaged in permanent rule making to implement ESHB 1814. The public hearing on the proposed rules was held on November 7, 2017. The CR-103P rule-making order, was filed on November 8, 2017, under WSR 17-23-046. The permanent rules will be effective on December 9, 2017. The language in the permanent rules adopted under the CR-103P filed November 8, 2017, is identical to that in the emergency rules.

Citation of Rules Affected by this Order: Amending WAC 388-14A-4505 and 388-14A-4510.

Statutory Authority for Adoption: Implementation of ESHB 1814 (chapter 269, Laws of 2017), which takes effect on July 23, 2017, is authorized under RCW 26.23.030, 34.05.220 (1)(a), 34.05.322, 34.05.350 (1)(a) and (b), 74.04.-055, 74.08.090, 74.20.040(9), 74.20A.310, and 74.20A.328.

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

Reasons for this Finding: ESHB 1814 (chapter 269, Laws of 2017), which took effect on July 23, 2017, amended RCW 74.20A.320 to change the requirements for service of the notice of noncompliance and intent to suspend licenses, which is the first step in the process to suspend one or more licenses of a noncustodial parent who is not in compliance with a court order. In order to implement ESHB 1814, DCS must amend WAC 388-14A-4505 and must correct a cross-reference in WAC 388-14A-4510.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 13, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-029, filed 1/12/10, effective 2/12/10)

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a non-custodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) The language of the underlying child support order determines the method by which DCS must serve the notice of noncompliance and intent to suspend licenses.

(3) If the support order establishing or modifying the child support obligation includes a statement required under RCW 26.23.050 that the NCP's privileges to obtain and maintain a license may not be renewed or may be suspended if the NCP is not in compliance with a support order, DCS may serve the notice by regular mail to the NCP's last known mailing address on file with the department.

(a) Notice by regular mail is deemed served three days from the date the notice was deposited with the United States Postal Service.

(b) DCS may choose to serve the notice by personal service.

(4) If the support order does not include a statement that the NCP's privileges to obtain and maintain a license may not be renewed or may be suspended if the NCP is not in compliance with a support order:

(a) DCS must serve the notice by certified mail, return receipt requested.

(b) If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

~~((3)) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.~~

~~(4))~~ (5) The notice must contain the information required by RCW 74.20A.320(2), including:

(a) The address and telephone number of DCS office that issued the notice;

(b) That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after receipt if the notice was served outside the state of Washington, to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request a hearing as provided in WAC 388-14A-4527;

(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.

(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

(6) DCS is not required to include a copy of the NCP's child support order with the notice. Upon request from the NCP, DCS must provide a copy of the order or orders that serve as a basis for the notice of noncompliance.

AMENDATORY SECTION (Amending WSR 10-03-029, filed 1/12/10, effective 2/12/10)

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may serve a notice of noncompliance on a non-custodial parent (NCP) who is not in compliance with a child support order.

(a) DCS may serve a notice of noncompliance on an NCP who meets the criteria of this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the objection period set out in WAC ((~~388-14A-4505 (4)(b)~~) 388-14A-4505 (5)(b)) until the NCP has been out of jail or prison for thirty days.

(b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the objection period in WAC ((~~388-14A-4505 (4)(b)~~) 388-14A-4505 (5)(b)) until the thirty days after the NCP's cash assistance grant is terminated.

(2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes no more than six months' worth of child support.

(3) Noncompliance with a child support order for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an arrears or arrearage, totaling more than six months' worth of child support payments; or

(c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward current support and arrearages and the arrearages still amount to more than six months' worth of child support payments.

(4) There is no minimum dollar amount required for license suspension, as long as the arrears owed by the NCP amount to more than six months' worth of support payments:

Example 1. Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is more than six months in arrears.

Example 2. Assume the child support order sets current support at one hundred dollars per month: The NCP has paid for the last few months, but owes arrears of over six hundred dollars. This NCP is more than six months in arrears.

Example 3. Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of over one thousand two hundred dollars. This NCP is more than six months in arrears.

Example 4. Assume a judgment of three thousand dollars is entered by the court: The order requires the NCP to pay fifty dollars per month toward the arrears. The NCP has not made payments toward this obligation for eight months. This NCP is more than six months in arrears.

WSR 17-23-087

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-319—Filed November 14, 2017, 4:36 p.m., effective November 15, 2017, 7:00 a.m.]

Effective Date of Rule: November 15, 2017, 7:00 a.m.

Purpose: Amends commercial purse seine and gillnet fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-1200K and 220-354-1600K; and amending WAC 220-354-120 and 220-354-160.

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 is needed to open the commercial salmon fisheries in Salmon Management and Catch Reporting Areas 7 and 7A targeting harvestable surplus of chum salmon remaining on the nontreaty share. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 14, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000K Purse seine—Open periods.

Notwithstanding the provisions of WAC 220-354-120, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	Open 7 AM to 5 PM daily November 15 - November 18

NEW SECTION

WAC 220-354-16000K Gillnet—Open periods.

Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	Open 7 AM to midnight daily November 15 - November 18

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 AM November 19, 2017:

WAC 220-354-12000K Purse seine—Open periods.

WAC 220-354-16000K Gillnet—Open periods.

**WSR 17-23-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-317—Filed November 15, 2017, 11:16 a.m., effective November 18, 2017]

Effective Date of Rule: November 18, 2017.

Purpose: Amends recreational fishing rules for the Snake River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000W; and amending WAC 220-312-050.

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 is necessary because there are enough hatchery Group A steelhead in the basin to allow for increasing daily limits, while also reaching hatchery broodstock needs at all Group A steelhead hatcheries, including those in Oregon, Idaho, and Washington. 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 the Request of a Non-governmental 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: November 15, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-05000X Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions

of WAC 220-312-050, effective November 18, 2017, until further notice, the following rules apply: Unless otherwise amended, all permanent rules remain in effect.

(1) Grande Ronde River - from the County Road Bridge (about 2.5 miles upstream from the mouth) to the Oregon State line.

(a) Daily limit of two hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

(c) It is unlawful to fish for or possess steelhead in those waters of all tributaries of the Grande Ronde River.

(2) Snake River - from the mouth of the Snake River (Burbank to Pasco railroad bridge at Snake River mile 1.25) to the Washington/Idaho State line, at Clarkston Washington.

(a) Daily limit two hatchery steelhead.

(b) Release all steelhead 28 inches or greater in length.

(3) Snake River - from the Idaho/Washington state line at (Clarkston Washington) upstream to the Couse Creek Boat Ramp.

(a) Daily limit two hatchery steelhead.

(b) Release all steelhead 28 inches or greater in length.

(4) Snake River - from Couse Creek Boat Ramp upstream to the Idaho/Oregon state line.

(a) Daily limit two hatchery steelhead.

(b) No maximum size limit for hatchery steelhead.

(5) Touchet River - from the mouth to the confluence of the North and South Fork Touchet Rivers.

(a) Daily limit of two hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

(c) It is unlawful to fish for or possess steelhead in those waters of all tributaries of the Touchet River.

(6) Tucannon River - from the mouth to the Tucannon Hatchery Road Bridge.

(a) Daily limit of two hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

(7) Walla Walla River - from the mouth to the Oregon State line.

(a) Daily limit of two hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 18, 2017:

WAC 220-312-05000W Freshwater exceptions to state-wide rules—Eastside. (17-274)

WSR 17-23-103
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-320—Filed November 15, 2017, 3:43 p.m., effective November 15, 2017, 3:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is for the purpose of interpreting and defining terminology of licenses in RCW 77.15.568 that were modified in SB 5306. The purpose of the proposal is to provide a cross-walk of the licenses identified in SB 5306 and existing license titles defined in RCW 77.08.010, 77.15.568, and 77.65.510.

Proposing to create new WAC 220-352-032 regarding terminology for wholesale fish buyer and limited fish seller. For purposes of RCW 77.15.568, the term "wholesale fish buyer" means "wholesale fish dealer" as that term is defined in RCW 77.08.010(70), and the term "limited fish seller" means a holder of a "direct retail endorsement" issued under the authority of RCW 77.65.510. The updated terminology would impact license holders and enforcement by clarifying the license terms used. If the terminology is not updated, there may be confusion among license holders and enforcement. Updating the terminology would clarify the license terms used.

Citation of Rules Affected by this Order: New WAC 220-352-032 [220-352-03200B]; and repealing WAC 220-352-03200B.

Statutory Authority for Adoption: RCW 77.04.090 and 77.04.130.

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 create a new WAC for the purpose of interpreting and defining terminology of licenses in RCW 77.15.568 that were modified in SB 5306. SB 5306 went into effect on July 23, 2017, and introduces different terminologies of licenses that are not defined elsewhere. This WAC provides a cross-walk of the license in the modified bill in RCW 77.15.568 to the existing license titles defined in RCW 77.08.010(70), 77.65.510, 77.65.515, and 77.65.520. This emergency rule is 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 the Request of a Non-governmental 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: November 15, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-352-03200B Definitions for wholesale fish buyer and limited fish seller. Notwithstanding the provisions of chapter 220-352 WAC, effective immediately through December 31, 2017, for purposes of RCW 77.15.568, the term "wholesale fish buyer" means "wholesale fish dealer" as that term is defined in RCW 77.08.010 Section 70, and the term "limited fish seller" means a holder of a "direct retail endorsement" issued under the authority of RCW 77.65.510.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2018:

WAC 220-352-03200B Definitions for wholesale fish buyer and limited fish seller.

**WSR 17-23-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-320—Filed November 15, 2017, 3:54 p.m., effective November 17, 2017]

Effective Date of Rule: November 17, 2017.

Purpose: Amends commercial purse seine fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000L; and amending WAC 220-354-120.

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 is needed to open the commercial salmon gillnet fishery in Salmon Management and Catch Reporting Areas 12, 12B, and 12C targeting harvestable surplus of chum salmon remaining on the nontreaty share. 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 the Request of a Non-governmental 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: November 15, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000L Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B and 12C	November 17, 2017 7:00 AM - 3:00 PM

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. November 17, 2017:

WAC 220-354-12000L Purse seine—Open periods.

**WSR 17-23-108
EMERGENCY RULES
ATTORNEY GENERAL'S OFFICE**

[Filed November 16, 2017, 7:59 a.m., effective November 20, 2017]

Effective Date of Rule: November 20, 2017.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The Public Records Act is chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2017 (section 3, chapter 304, Laws of 2017) requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The emergency WAC 44-06-092 makes those findings. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. WAC 44-06-092 also provides for fee waivers.

Purpose: The purpose of the rule is to implement the state legislature's new Public Records Act requirement and provide the necessary findings so that the office of the attorney general may continue to use the amended statutory default fee and waive copy fees under listed circumstances as provided in the CR-103E that was effective on July 23, 2017. The additional purpose of the rule is to explain procedures for payment. Permanent rule making has been initiated, and the

filing of this CR-103E will prevent a gap in fee authority pending adoption of a permanent rule.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120 (as amended by chapter 304, Laws of 2017), 43.10.110.

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 office of the attorney general finds good cause that the emergency WAC 44-06-092 is necessary for the following reasons. The Public Records Act is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require that effective July 23, 2017 if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in WAC 44-06-092. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 44-06-092 describes the circumstances under which the office will waive copy fees.

There was insufficient time under permanent rule-making procedures for the office to bring its copy fees into statutory compliance by July 23, 2017, and as directed by the legislature. The office also finds that it is in the general welfare and the public interest, and benefits requesters and the agency, to have adopted an emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. Therefore, emergency rule making was and is necessary. The office has initiated permanent rule making on these subjects. In order to continue to be able to use the amended statutory default fee and waive copy fees under certain listed circumstances, the office is filing this CR-103E to extend the existing emergency rule pending adoption of a permanent 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 the Request of a Non-governmental 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 1, 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: November 16, 2017.

Bob Ferguson
Attorney General

NEW SECTION

WAC 44-06-092 Copying fees—Payments. (1) The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons: (i) The office does not have the resources to conduct a study to determine all its actual copying costs; (ii) to conduct such a study would interfere with other essential agency functions; and, (iii) through the 2017 legislative process, the public and requesters have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to 42.56.120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requester under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at www.atg.wa.gov.

(4) Requesters are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions.

(a) It is within the discretion of the public records officer to waive copying fees when: (i) all of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requester will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requester of when payment is due.

(7) Payment should be made by check or money order to the attorney general's office. The office prefers not to receive

cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requester fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

WSR 17-23-109
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed November 16, 2017, 9:08 a.m., effective November 18, 2017]

Effective Date of Rule: November 18, 2017.

Purpose: The department is amending WAC 388-25-0506 Who is eligible for extended foster care?, 388-25-0528 How does a youth agree to participate in the extended foster care program?, and 388-25-0534 If an extended foster care participant loses his or her eligibility before he or she turns nineteen, can he or she reapply for extended foster care?, in order to align these sections with recent changes to RCW 74.13.031 that expand the age youth can reenroll into the extended foster care program.

Citation of Rules Affected by this Order: Amending WAC 388-25-0506, 388-25-0528, and 388-25-0534.

Statutory Authority for Adoption: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030.

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

Reasons for this Finding: The department is amending these rules to align with changes resulting from state legislation. This change went into effect July 23, 2017. The department is proceeding with permanent rule adoption and has a public hearing scheduled for November 21, 2017. This emergency will keep the rules in place until permanent adoption.

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 the Request of a Non-governmental 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: November 9, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-14-065, filed 6/30/16, effective 7/31/16)

WAC 388-25-0506 Who is eligible for extended foster care? (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW, placed in foster care as defined in WAC 388-25-0508 by CA, and:

(a) Enrolled in school as described in WAC 388-25-0512 ~~((in a high school or high school equivalency program));~~

(b) ~~((Enrolled as described in WAC 388-25-0512 in a post-secondary academic or vocational education program;~~

~~((e)))~~ Have applied for ((and)), or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program ((e)) as described in WAC 388-25-0514((e)); ((e

~~((d)))~~ (c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 388-25-0515;

~~((e)))~~ (d) Engaged in employment for eighty hours or more per month; ((e

~~((f)))~~ (e) Unable to engage in subsection (1)(a) through ((e)) (d) of this section due a documented medical condition((-)) as described in WAC 388-25-0519; or

~~((2-))~~ Have)) (f) Did not enroll in the extended foster care program and;

(i) Had their dependency dismissed on their eighteenth birthday ((as the youth did not meet any of the criteria found in subsections (1)(a) through (f) of this section, or did not agree to participate in the program and the youth));

(ii) Is requesting to ((participate)) enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of nineteen((-)); and

(iii) Meets one of the criteria found in subsections (1)(a) through (e) of this section.

(2) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA one time before the age of twenty-one. The youth must meet one of the criteria in subsections (1)(a) through ((e)) (e) when requesting to ((participate)) reenroll in the extended foster care program.

AMENDATORY SECTION (Amending WSR 16-06-044, filed 2/24/16, effective 3/26/16)

WAC 388-25-0528 How does a youth agree to participate in the extended foster care program? (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age nineteen; or

(b) Establishing a nonminor dependency before reaching age nineteen if the department denied entry into the program.

(3) An eligible nondependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one as long as the youth has not previously entered into a VPA for extended foster care services.

(4) In order to continue receiving extended foster care services after entering into a ~~((voluntary placement agreement))~~ VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a ~~((voluntary placement agreement))~~ VPA.

AMENDATORY SECTION (Amending WSR 14-13-051, filed 6/12/14, effective 7/13/14)

WAC 388-25-0534 If an extended foster care participant loses his or her eligibility before he or she turns ~~((nineteen))~~ twenty-one, ~~((and))~~ may he or she reapply for extended foster care? (1) Yes. If a youth was ~~((receiving))~~ receiving extended foster care ~~((services))~~ services and lost eligibility, he or she may reapply as long as the youth:

~~((1))~~ The youth) (a) Has not turned ~~((nineteen))~~ twenty-one; ~~((and~~

~~((2))~~ The youth) (b) Meets one of the conditions for eligibility in WAC ~~((388-25-0506))~~ 388-25-0506 (1)(a) through (c); and

~~((3))~~ The youth) (c) Has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.

(2) Youth may reenter the extended foster care program one time between the ages of eighteen to twenty-one.

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.

WSR 17-23-116

EMERGENCY RULES

WASHINGTON STATE UNIVERSITY

[Filed November 17, 2017, 8:31 a.m., effective November 17, 2017, 8:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The Public Records Act is chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2017 (section 3, chapter 304, Laws of 2017) requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule.

Purpose: To update and clarify the university's public records rules, chapter 504-45 WAC. The changes include, but are not limited to, rules regarding costs and available media for providing copies of public records.

Note: This emergency rule-making order was originally filed on July 21, 2017. A proposal for similar permanent rules

was filed as WSR 17-18-092, intended for adoption on November 17, 2017.

Citation of Rules Affected by this Order: Amending WAC 504-45-010, 504-45-020, 504-45-030, 504-45-040, 504-45-050, 504-45-060, 504-45-070, and 504-45-080.

Statutory Authority for Adoption: RCW 28B.30.150.

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: Washington state university (WSU) is updating procedures regarding requests for public records in order to comply with legislative changes pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, which are effective July 23, 2017. WSU is required to properly use state resources in responding to public records requests and adoption of the fee structure furthers that purpose. Adoption of the emergency rules allows WSU to assess fees for response to public records in a manner that is consistent with chapter 42.56 RCW. The state attorney general's office recommends instituting emergency rules because: (1) There is insufficient time under permanent rule-making procedures for WSU to bring its copy fees into statutory compliance by July 23, 2017, and as directed by the legislature; and (2) it is in the general welfare and the public interest, and benefits requesters and the university, to adopt the emergency rules in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. Therefore, emergency rule making is necessary. WSU intends to proceed with permanent rule making on these subjects in the near future.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

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

Date Adopted: November 17, 2017.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

WAC 504-45-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to

include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Washington State University ~~((will))~~ is to follow in order to provide full access to public records. Washington State University ~~((shall))~~ is hereinafter ~~((be))~~ referred to as the "university." Where appropriate, the term university also refers to the staff and employees of Washington State University. These rules provide information to persons wishing to request access to public records of the university and establish processes for both requestors and university staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules ~~((will be))~~ are interpreted in favor of disclosure. In carrying out its responsibilities under the act, the university ~~((will be))~~ is guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-020 Agency description—Contact information—Public records officer. (1) Washington State University is an institution of higher education, authority for which is located in chapter 28B.30 RCW. The administrative offices of the university are located at the university's main campus at Pullman, Washington. ~~((Regional))~~ Other campuses are located ~~((in))~~ at Spokane, Tri-Cities, ~~((and))~~ and Vancouver, and Everett, Washington. Agricultural research centers are located at Mt. Vernon, Prosser, Puyallup, Vancouver, and Wenatchee, Washington. Cooperative extension offices are maintained ~~((in))~~ at the county seats of all counties in the state. The university also has operations offices ~~((in))~~ at Seattle and Olympia, Washington.

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request, should contact the university's public records office located at the Pullman administrative offices. Current contact information and additional information regarding release of public records ~~((can be found))~~ are available on the ~~((university))~~ university's web site at ~~((http://www.wsu.edu))~~ https://wsu.edu.

(3) The public records officer ~~((will))~~ oversees compliance with the act, but another university staff member may process the request. Therefore, these rules ~~((will))~~ refer to the public records officer or "designee." The public records officer or designee and the university ~~((will))~~ provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university. For the purposes of this chapter, the normal business hours for the public records office ~~((shall be))~~ are from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding the university's holidays and scheduled and emergency closure periods. Records must be inspected at the offices of the university.

(2) Index of records. An index of final orders, declaratory orders, interpretive statements, and policy statements entered after June 30, 1990, is available at the office of the university's rules coordinator at the Pullman campus. The university ~~((will))~~ posts links to many of these records on its web site at ~~((http://www.wsu.edu))~~ https://wsu.edu.

(3) Organization of records. The university ~~((will))~~ maintains its records in a reasonably organized manner. The university ~~((will))~~ takes reasonable actions to protect records from damage and disorganization. A requestor ~~((shall))~~ must not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the ~~((university))~~ university's web site at ~~((www.wsu.edu))~~ https://wsu.edu. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university should make the request in writing on the university's request form, or by letter, fax, or email addressed to the public records officer or designee. The following information must be included in the request:

(i) Name of the person requesting records;

(ii) Mailing address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to RCW 42.56.120, standard photocopies ~~((will be))~~ or electronically produced copies are provided at ~~((a rate of no more than fifteen cents per page. The university may charge the current approved rate for scanned images of paper records if images are requested))~~ the rates established in WAC 504-45-070. A requestor may also refer to the ~~((university))~~ university's web site at ~~((http://www.wsu.edu))~~ https://wsu.edu for current rates.

(c) A form is available for use by requestors at the public records office and on the university's web site at ~~((http://www.wsu.edu))~~ https://wsu.edu.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she ~~((will))~~ confirms receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-040 Processing of public records requests—General. (1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it ~~((will))~~ is to "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee ~~((will process))~~ processes requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee ~~((will do))~~ does one or more of the following:

(a) Makes the records available for inspection or copying;

(b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, sends the copies to the requestor;

(c) Provides a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, requests clarification from the requestor. Such clarification may be requested and provided by telephone, email, or mail. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or

(e) ~~((Deny))~~ Denies the request.

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons ~~((will))~~ includes a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer or designee ~~((will))~~ states the specific exemption and provides a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee ~~((will))~~ redacts the exempt portions, provides the non-exempt portions, and indicates to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university ~~((shall))~~ must promptly provide space to inspect public

records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor ~~((shall))~~ must indicate which documents he or she wishes the university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university ~~((will notify))~~ notifies the requestor in writing of this requirement and informs the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee ~~((shall))~~ makes any copies of records requested by the requestor or arranges for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee ~~((will))~~ provides access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee ~~((will))~~ indicates that the university has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee ~~((will))~~ closes the request and indicates to the requestor that the university has closed the request.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional responsible documents existing at the time of the request, it ~~((will))~~ must promptly inform the requestor of the additional documents and ~~((will))~~ make them available for inspection or provide copies upon payment on an expedited basis.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-050 Processing of public records requests—Electronic records. (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. When a requestor requests records in an electronic format, the public records officer or designee ~~((will))~~ provides the nonexempt records

or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to databases. With the consent of the requestor, the university may provide customized access under RCW 43.41A.130 if the record is not reasonably locatable or not reasonably translatable into the format requested. The university may charge a fee consistent with RCW 43.41A.130 for such customized access. (See WAC 504-45-070.)

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

WAC 504-45-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the university for inspection and copying. This is not an exhaustive list as numerous exemptions exist outside the act. The university's failure to list an exemption here (~~(shall)~~) does not affect the efficacy of any exemption.

- (a) RCW 5.60.060(~~(—)~~)—Privileged communications;
- (b) 20 U.S.C. 1232g(~~(—)~~)—Family Education Rights and Privacy Act (FERPA);
- (c) 42 U.S.C. 405 (c)(2)(vii)(1)(~~(—)~~)—Social Security numbers;
- (d) 45 C.F.R. (~~(16-0164—HIPAA Privacy Rule)~~) parts 106 and 164 - Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- (e) Chapter 19.108 RCW and RCW 4.24.601(~~(—)~~)—Uniform Trade Secrets Act; and
- (f) Chapter 10.97 RCW (~~(10-97—)~~)—Regarding criminal history information.

(2) The university is prohibited by statute from providing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-070 Costs of providing copies of public records. (1) Costs for copies of (~~(paper))~~ public records. There is no fee for inspecting public records. (~~(A requestor may obtain standard black and white photocopies for fifteen cents per page or scanned images at the current approved rate per image. Before beginning to make the copies or images, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The university will not charge sales tax when it makes copies of public records. The university may charge actual costs for special arrangements necessary for~~

~~providing copies of records when required by the requestor, e.g., costs of color copying.~~

(2) ~~Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.)~~ The following fees apply to copies of public records:

(a) Ten cents per page for records scanned into electronic format;

(b) Five cents for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system;

(c) Ten cents per gigabyte for transmitting records electronically;

(d) Fifteen cents per page for photocopies of public records and/or printed copies of electronic public records when requested;

(e) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(2) In addition to the charge imposed for providing copies of public records and for the use by any person of university equipment, the university may include a customized service charge. A customized service charge may only be imposed if the university estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the university for other purposes. The customized service charge may reimburse the university up to the actual cost of providing the services in this section. The university must not assess a customized service charge unless it has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimated cost of the charge. The university provides the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge. The university may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If the university makes a request available on a partial or installment basis, the university may charge for each part of the request as it is provided.

(3) Payment. Payment may be made by cash, check, or money order to the university.

(4) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, Washington State University declares that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records for the following reasons:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

AMENDATORY SECTION (Amending WSR 08-08-055, filed 3/27/08, effective 4/27/08)

WAC 504-45-080 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition (~~((shall))~~) must include a copy of, or reasonably identify, the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer (~~((will))~~) must immediately consider the petition and either affirm or reverse such denial within two business days following the university's receipt of the petition, or within such other time as the university and the requestor mutually agree (~~((to))~~).

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the university denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office (~~((to))~~) review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may (~~((obtain))~~) request court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

Number of Sections Adopted at the Request of a Non-governmental 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: November 17, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-73000F Commercial sea cucumber fishery. Notwithstanding the provisions of WAC 220-340-730, effective November 20, 2017, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following Marine Fish-Shellfish Areas of Sea Cucumber District 3 Monday through Friday of each week: 26A and 24A, 24B, 24C, and 24D.

(2) A designated representative of the Washington Department of Fish and Wildlife must be on board the vessel during harvest.

WSR 17-23-125

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-322—Filed November 17, 2017, 1:20 p.m., effective November 20, 2017]

Effective Date of Rule: November 20, 2017.

Purpose: Allows for a scientific harvest in Sea Cucumber District 3.

Citation of Rules Affected by this Order: Amending WAC 220-340-730.

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 open a scientific harvest of Sea Cucumber District 3 pursuant to a proposal distributed to the tribal comanagers. There is insufficient time to adopt permanent rules.

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

WSR 17-23-127

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-323—Filed November 17, 2017, 2:05 p.m., effective November 17, 2017, 2:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This change will prevent the importation and retention of dead nonresident wildlife harvested in the state of Montana.

Citation of Rules Affected by this Order: Amending WAC 220-413-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.32.470.

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: Because Montana has identified chronic wasting disease in wild free ranging deer, the department seeks to mitigate the risk to public health and safety by adding the state of Montana to WAC 220-413-030.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 17, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-413-03000A Importation and retention of dead nonresident wildlife Notwithstanding the provisions of WAC 220-413-030, effective immediately, until further notice, it is unlawful to import or possess deer, elk, or moose, or parts thereof, harvested in Montana. Unless otherwise amended, all other permanent rules remain in effect.

WSR 17-23-143
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 20, 2017, 2:18 p.m., effective November 20, 2017, 2:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In 2017, EHB 1595 authorized the office of superintendent of public instruction (OSPI), along with other Washington state agencies, to charge for the copying and transmission of certain public records, including records stored in an electronic format. Under EHB 1595, these fees must be identified in agency rules or following an opportunity for notice and comment. OSPI is temporarily adopting fees under EHB 1595 and is considering permanent adoption of these fees.

Citation of Rules Affected by this Order: Amending WAC 392-105-030.

Statutory Authority for Adoption: RCW 42.56.070, 42.56.120.

Other Authority: EHB 1595 (2017).

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: Immediate adoption of this rule is necessary for the preservation of the general welfare. OSPI currently imposes charges for the copying [of] public records. OSPI adopted an emergency rule (WSR 17-16-038) upon the

effective date of HB [EHB] 1595 so that the agency would not lose its authority to continue charging costs for providing public records. At the same time, OSPI is actively undertaking the appropriate procedures to adopt the rule as a permanent rule and make additional changes to the agency's public records rules in chapter 392-105 WAC. Observing the time requirements of notice and opportunity to comment upon adoption of the permanent rule at this time would be contrary to the public interest.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 20, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 93-07-039, filed 3/11/93, effective 4/11/93)

WAC 392-105-030 Charges for copying. (1) Pursuant to RCW 42.56.120 (2)(b), the office of superintendent of public instruction has determined that calculating the actual costs the agency charges for providing public records is unduly burdensome. The office of superintendent of public instruction does not use a single staffing or equipment resource when responding to public records requests. Rather, the agency uses assorted equipment located across the agency to photocopy, scan, upload, or transmit records for the public. The actual costs of using this equipment varies across the agency's cost centers. The office of superintendent of public instruction does not have budget capacity to perform a cost study for these purposes.

(2) No fee shall be charged for the inspection of public records. The superintendent of public instruction (~~may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse SPI for its actual costs incident to such copying.~~) imposes the following charges for the costs of copying public records:

(a) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(b) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(c) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(d) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations; and

(e) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(3) No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

WSR 17-23-144
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-324—Filed November 20, 2017, 2:28 p.m., effective November 20, 2017, 2:28 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends the rules for the commercial sea urchin fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000C; and amending WAC 220-340-750.

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 close commercial red sea urchin harvest in District 1 to prevent overharvest. Harvestable surpluses of sea urchin exist in Districts 2, 3, and 4 to remain open for red sea urchin 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 the Request of a Non-governmental 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: November 20, 2017.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000D Commercial sea urchin fisheries Notwithstanding the provisions of WAC 220-340-750, 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 for red sea urchin harvest seven days-per-week: Sea Urchin District 2, and District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000C Commercial sea urchin fisheries.
(17-310)

**WSR 17-23-147
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-325—Filed November 20, 2017, 4:21 p.m., effective November 20, 2017, 4:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial purse seine and gillnet fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000M and 220-354-16000L; and amending WAC 220-354-120 and 220-354-160.

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 open the commercial gillnet salmon fishery in Salmon Management and Catch Reporting Area 12C targeting harvestable surplus of chum salmon remaining on the nontribal share. There is no agreement with the comanagers to open purse seines. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 20, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-354-12000M Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
12, 12B, and 12C	Closed

NEW SECTION

WAC 220-354-16000L Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area	Open Periods
12 and 12B	Closed
12C	Open 6 AM to 6 PM daily 11/21, 11/22, 11/23, 11/24, 11/25, 11/26, 11/27

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 PM November 27, 2017:

WAC 220-354-12000M Purse seine—Open periods.

WAC 220-354-16000L Gillnet—Open periods.

**WSR 17-23-169
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 21, 2017, 11:15 a.m., effective November 22, 2017]

Effective Date of Rule: November 22, 2017.

Purpose: The department is amending WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide AL, ARC, or EARC services, in order to update the comprehensive assessment reporting evaluation (CARE) table found in rule to reflect the current daily rates. The department has filed proposed rules as WSR 17-21-074 and a public hearing will be held on November 21, 2017.

Citation of 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 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 daily medicaid payment rates changed effective July 1, 2017, with the new budget/fiscal year.

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 the Request of a Non-governmental 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: November 15, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-02-029, filed 12/28/16, effective 1/28/17)

WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide AL, ARC, or EARC services. For contracted adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services, the department pays the following daily rates for medicaid residents who have been assessed using the comprehensive assessment reporting evaluation (CARE) tool:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	(\$67.22) <u>\$70.59</u>	(\$72.64) <u>\$76.01</u>	(\$47.67) <u>\$50.06</u>	(\$47.67) <u>\$50.06</u>	(\$52.47) <u>\$71.96</u>
A Med	(\$72.74) <u>\$76.38</u>	(\$78.16) <u>\$81.80</u>	(\$54.03) <u>\$56.74</u>	(\$54.03) <u>\$56.74</u>	(\$59.36) <u>\$74.74</u>
A High	(\$81.57) <u>\$85.66</u>	(\$86.99) <u>\$91.08</u>	(\$59.30) <u>\$62.27</u>	(\$59.30) <u>\$62.27</u>	(\$66.27) <u>\$81.23</u>
B Low	(\$67.22) <u>\$70.59</u>	(\$72.64) <u>\$76.01</u>	(\$47.67) <u>\$50.06</u>	(\$47.67) <u>\$50.06</u>	(\$52.72) <u>\$73.40</u>
B Med	(\$74.96) <u>\$78.72</u>	(\$80.39) <u>\$84.14</u>	(\$60.39) <u>\$63.42</u>	(\$60.39) <u>\$63.42</u>	(\$66.58) <u>\$79.78</u>
B Med-High	(\$84.83) <u>\$89.08</u>	(\$90.25) <u>\$94.50</u>	(\$64.19) <u>\$67.41</u>	(\$64.19) <u>\$67.41</u>	(\$71.24) <u>\$86.56</u>
B High	(\$89.28) <u>\$93.75</u>	(\$94.70) <u>\$99.17</u>	(\$73.31) <u>\$76.98</u>	(\$73.31) <u>\$76.98</u>	(\$81.27) <u>\$89.05</u>
C Low	(\$72.74) <u>\$76.38</u>	(\$78.16) <u>\$81.80</u>	(\$54.03) <u>\$56.74</u>	(\$54.03) <u>\$56.74</u>	(\$59.36) <u>\$81.03</u>
C Med	(\$81.57) <u>\$85.66</u>	(\$86.99) <u>\$91.08</u>	(\$67.70) <u>\$71.09</u>	(\$67.70) <u>\$71.09</u>	(\$75.43) <u>\$93.33</u>
C Med-High	(\$101.43) <u>\$106.51</u>	(\$106.85) <u>\$111.93</u>	(\$90.09) <u>\$94.60</u>	(\$90.09) <u>\$94.60</u>	(\$98.41) <u>\$98.41</u>
C High	(\$102.44) <u>\$107.57</u>	(\$107.86) <u>\$112.99</u>	(\$90.95) <u>\$95.51</u>	(\$90.95) <u>\$95.51</u>	\$99.76
D Low	(\$74.96) <u>\$78.72</u>	(\$80.38) <u>\$84.14</u>	(\$72.87) <u>\$76.52</u>	(\$72.87) <u>\$76.52</u>	(\$76.87) <u>\$86.46</u>
D Med	(\$83.23) <u>\$87.40</u>	(\$88.65) <u>\$92.82</u>	(\$84.35) <u>\$88.58</u>	(\$84.35) <u>\$88.58</u>	(\$93.79) <u>\$95.25</u>

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			
D Med-High	(\$107.49) <u>\$112.88</u>	(\$112.91) <u>\$118.30</u>	(\$107.13) <u>\$112.50</u>	(\$107.13) <u>\$112.50</u>	\$112.59
D High	(\$115.79) <u>\$121.59</u>	(\$121.21) <u>\$127.01</u>	(\$115.79) <u>\$121.59</u>	(\$115.79) <u>\$121.59</u>	\$128.01
E Med	(\$139.84) <u>\$146.85</u>	(\$145.26) <u>\$152.27</u>	(\$139.84) <u>\$146.85</u>	(\$139.84) <u>\$146.85</u>	\$154.39
E High	(\$163.89) <u>\$172.10</u>	(\$169.31) <u>\$177.52</u>	(\$163.89) <u>\$172.10</u>	(\$163.89) <u>\$172.10</u>	\$180.80

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	(\$61.69) <u>\$64.78</u>	(\$66.61) <u>\$69.70</u>	(\$47.67) <u>\$50.06</u>	(\$47.67) <u>\$50.06</u>	(\$52.47) <u>\$70.78</u>
A Med	(\$65.02) <u>\$68.28</u>	(\$69.94) <u>\$73.20</u>	(\$51.91) <u>\$54.51</u>	(\$51.91) <u>\$54.51</u>	(\$57.06) <u>\$73.49</u>
A High	(\$79.37) <u>\$83.35</u>	(\$84.29) <u>\$88.27</u>	(\$56.56) <u>\$59.39</u>	(\$56.56) <u>\$59.39</u>	(\$62.80) <u>\$79.80</u>
B Low	(\$61.69) <u>\$64.78</u>	(\$66.61) <u>\$69.70</u>	(\$47.67) <u>\$50.06</u>	(\$47.67) <u>\$50.06</u>	(\$52.72) <u>\$72.18</u>
B Med	(\$70.52) <u>\$74.05</u>	(\$75.44) <u>\$78.97</u>	(\$57.22) <u>\$60.09</u>	(\$57.22) <u>\$60.09</u>	(\$63.11) <u>\$78.39</u>
B Med-High	(\$79.83) <u>\$83.83</u>	(\$84.75) <u>\$88.78</u>	(\$60.81) <u>\$63.86</u>	(\$60.81) <u>\$63.86</u>	(\$67.59) <u>\$84.98</u>
B High	(\$87.07) <u>\$91.43</u>	(\$91.99) <u>\$96.35</u>	(\$71.25) <u>\$74.82</u>	(\$71.25) <u>\$74.82</u>	(\$79.00) <u>\$87.41</u>
C Low	(\$65.02) <u>\$68.28</u>	(\$69.94) <u>\$73.20</u>	(\$52.12) <u>\$54.73</u>	(\$52.12) <u>\$54.73</u>	(\$57.48) <u>\$79.61</u>
C Med	(\$79.37) <u>\$83.35</u>	(\$84.29) <u>\$88.27</u>	(\$66.84) <u>\$70.19</u>	(\$66.84) <u>\$70.19</u>	(\$73.63) <u>\$91.57</u>
C Med-High	(\$98.10) <u>\$103.01</u>	(\$103.02) <u>\$107.93</u>	(\$83.73) <u>\$87.92</u>	(\$83.73) <u>\$87.92</u>	(\$91.53) <u>\$93.63</u>
C High	(\$99.09) <u>\$105.05</u>	(\$104.01) <u>\$108.97</u>	(\$89.04) <u>\$93.50</u>	(\$89.04) <u>\$93.50</u>	\$97.03
D Low	(\$70.52) <u>\$74.05</u>	(\$75.44) <u>\$78.97</u>	(\$71.87) <u>\$75.47</u>	(\$71.87) <u>\$75.47</u>	(\$75.20) <u>\$84.89</u>
D Med	(\$80.98) <u>\$85.04</u>	(\$85.90) <u>\$89.96</u>	(\$82.67) <u>\$86.81</u>	(\$82.67) <u>\$86.81</u>	(\$91.30) <u>\$93.44</u>
D Med-High	(\$103.98) <u>\$109.19</u>	(\$108.90) <u>\$114.11</u>	(\$104.50) <u>\$109.74</u>	(\$104.50) <u>\$109.74</u>	\$109.19

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			
D High	((<u>\$112.63</u>)) <u>\$118.27</u>	((<u>\$117.55</u>)) <u>\$123.19</u>	((<u>\$112.63</u>)) <u>\$118.27</u>	((<u>\$112.63</u>)) <u>\$118.27</u>	\$123.88
E Med	((<u>\$135.52</u>)) <u>\$142.31</u>	((<u>\$140.44</u>)) <u>\$147.23</u>	((<u>\$135.52</u>)) <u>\$142.31</u>	((<u>\$135.52</u>)) <u>\$142.31</u>	\$149.01
E High	((<u>\$158.40</u>)) <u>\$166.34</u>	((<u>\$163.32</u>)) <u>\$171.23</u>	((<u>\$158.40</u>)) <u>\$166.34</u>	((<u>\$158.40</u>)) <u>\$166.34</u>	\$174.13

*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	((<u>\$60.61</u>)) <u>\$63.65</u>	((<u>\$65.85</u>)) <u>\$68.89</u>	((<u>\$47.67</u>)) <u>\$50.06</u>	((<u>\$47.67</u>)) <u>\$50.06</u>	((<u>\$52.47</u>)) <u>\$69.07</u>
A Med	((<u>\$65.02</u>)) <u>\$68.28</u>	((<u>\$70.26</u>)) <u>\$73.52</u>	((<u>\$50.86</u>)) <u>\$53.41</u>	((<u>\$50.86</u>)) <u>\$53.41</u>	((<u>\$55.92</u>)) <u>\$71.67</u>
A High	((<u>\$79.37</u>)) <u>\$83.38</u>	((<u>\$84.61</u>)) <u>\$88.59</u>	((<u>\$55.66</u>)) <u>\$58.45</u>	((<u>\$55.66</u>)) <u>\$58.45</u>	((<u>\$61.67</u>)) <u>\$77.73</u>
B Low	((<u>\$60.61</u>)) <u>\$63.65</u>	((<u>\$65.85</u>)) <u>\$68.89</u>	((<u>\$47.67</u>)) <u>\$50.06</u>	((<u>\$47.67</u>)) <u>\$50.06</u>	((<u>\$52.72</u>)) <u>\$70.42</u>
B Med	((<u>\$70.52</u>)) <u>\$74.05</u>	((<u>\$75.76</u>)) <u>\$79.29</u>	((<u>\$56.16</u>)) <u>\$58.97</u>	((<u>\$56.16</u>)) <u>\$58.97</u>	((<u>\$61.96</u>)) <u>\$76.38</u>
B Med-High	((<u>\$79.83</u>)) <u>\$83.83</u>	((<u>\$85.07</u>)) <u>\$89.07</u>	((<u>\$59.68</u>)) <u>\$62.67</u>	((<u>\$59.68</u>)) <u>\$62.67</u>	((<u>\$66.29</u>)) <u>\$82.71</u>
B High	((<u>\$87.07</u>)) <u>\$91.43</u>	((<u>\$92.31</u>)) <u>\$96.67</u>	((<u>\$67.41</u>)) <u>\$70.79</u>	((<u>\$67.41</u>)) <u>\$70.79</u>	((<u>\$74.79</u>)) <u>\$85.04</u>
C Low	((<u>\$65.02</u>)) <u>\$68.28</u>	((<u>\$70.26</u>)) <u>\$73.52</u>	((<u>\$50.86</u>)) <u>\$53.41</u>	((<u>\$50.86</u>)) <u>\$53.41</u>	((<u>\$55.92</u>)) <u>\$77.55</u>
C Med	((<u>\$79.37</u>)) <u>\$83.35</u>	((<u>\$84.61</u>)) <u>\$88.59</u>	((<u>\$63.20</u>)) <u>\$66.67</u>	((<u>\$63.20</u>)) <u>\$66.37</u>	((<u>\$70.85</u>)) <u>\$89.04</u>
C Med-High	((<u>\$98.10</u>)) <u>\$103.01</u>	((<u>\$103.34</u>)) <u>\$108.25</u>	((<u>\$80.54</u>)) <u>\$84.58</u>	((<u>\$80.54</u>)) <u>\$84.58</u>	((<u>\$88.10</u>)) <u>\$91.01</u>
C High	((<u>\$99.09</u>)) <u>\$104.05</u>	((<u>\$104.33</u>)) <u>\$109.29</u>	((<u>\$84.18</u>)) <u>\$88.40</u>	((<u>\$84.18</u>)) <u>\$88.40</u>	((<u>\$91.84</u>)) <u>\$93.08</u>
D Low	((<u>\$70.52</u>)) <u>\$74.05</u>	((<u>\$75.76</u>)) <u>\$79.29</u>	((<u>\$67.96</u>)) <u>\$71.36</u>	((<u>\$67.96</u>)) <u>\$71.36</u>	((<u>\$71.19</u>)) <u>\$82.62</u>
D Med	((<u>\$80.98</u>)) <u>\$85.04</u>	((<u>\$86.22</u>)) <u>\$90.28</u>	((<u>\$78.17</u>)) <u>\$82.09</u>	((<u>\$78.17</u>)) <u>\$82.09</u>	((<u>\$86.40</u>)) <u>\$90.83</u>
D Med-High	((<u>\$103.98</u>)) <u>\$109.19</u>	((<u>\$109.22</u>)) <u>\$114.43</u>	((<u>\$98.79</u>)) <u>\$103.74</u>	((<u>\$98.79</u>)) <u>\$103.74</u>	((<u>\$103.33</u>)) <u>\$104.36</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			
D High	(\$106.48) <u>\$111.81</u>	(\$111.72) <u>\$117.05</u>	(\$106.48) <u>\$111.81</u>	(\$106.48) <u>\$111.81</u>	\$117.20
E Med	(\$128.11) <u>\$134.53</u>	(\$133.35) <u>\$139.77</u>	(\$128.11) <u>\$134.53</u>	(\$128.11) <u>\$134.53</u>	\$140.94
E High	(\$149.75) <u>\$157.25</u>	(\$154.99) <u>\$162.49</u>	(\$149.75) <u>\$157.25</u>	(\$149.75) <u>\$157.25</u>	\$164.70

** 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 17-23-194
EMERGENCY RULES
COMMISSION ON**

ASIAN PACIFIC AMERICAN AFFAIRS

[Filed November 22, 2017, 10:45 a.m., effective November 22, 2017, 10:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 42.56.120 as amended effective July 23, 2017 (section 3, chapter 304, Laws of 2107 [2017]), requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual cost of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The emergency WAC 34-04-080 makes those findings.

Purpose: The purpose of the emergency rule is to implement the state legislature's new Public Records Act (PRA) requirement and provide the necessary findings so that the commission on Asian Pacific American affairs (CAPAA) may use the amended statutory default fee schedule in SHB [EHB] 1595 while CAPAA is in the process of adopting a permanent rule.

Citation of Rules Affected by this Order: Amending WAC 34-04-080.

Statutory Authority for Adoption: [RCW 43.117.050].

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: CAPAA finds good cause to adopt an emergency WAC 34-04-080 regarding PRA fees until permanent rules can be made. There was insufficient time under permanent rule-making procedures for CAPAA to

bring its copy fees into statutory compliance by July 23, 2017, as directed by the legislature. Without an emergency rule in place, PRA requests would be unduly burdensome for the agency without the ability to reimburse the agency for costs associated with fulfilling PRA requests. Furthermore, it would be unduly burdensome for CAPAA to calculate the actual costs it charges for providing copies of public records because funds were not allocated for performing a study and staff resources are insufficient to perform a study to calculate such actual costs.

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

Number of Sections Adopted at the Request of a Non-governmental 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 1, 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: November 22, 2017.

Michael Itti
Executive Director

AMENDATORY SECTION (Amending WSR 82-20-015, filed 9/28/82)

WAC 34-04-080 ((Copying)) Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule.
~~((No fee shall be charged for the inspection of public records. The commission shall charge a fee of \$.25 per page for providing copies of public records and for use of the commission's copy equipment. This charge is the amount necessary~~

~~to reimburse the commission for its actual costs incident to such copying.)~~ (1) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the Washington state commission on Asian Pacific American affairs declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The Washington state commission on Asian Pacific American affairs may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.