

WSR 11-10-002
EMERGENCY RULES
DEPARTMENT OF ECOLOGY

[Order 10-01—Filed April 20, 2011, 1:35 p.m., effective April 20, 2011,
1:35 p.m.]

Effective Date of Rule: Immediately.

Purpose: This fourth emergency rule will amend chapter 173-98 WAC, Use and limitations of the water pollution control revolving fund. These amendments will address provisions (e.g., green infrastructure or forgivable principal) in the 2010 clean water state revolving fund federal appropriation which affect how the agency can distribute funding to local jurisdictions for water pollution control project. Ecology filed a preproposal statement of inquiry (CR-101) on April 6, 2011, WSR 11-08-062, announcing ecology's intent to adopt a permanent rule for chapters 173-98 and 173-95A WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 173-98 WAC.

Statutory Authority for Adoption: RCW 90.48.035.

Other Authority: Chapters 34.05 and 90.50A RCW, RCW 43.21.080.

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

Reasons for this Finding: Emergency adoption is necessary to comply with provisions of the 2010 clean water state revolving fund federal appropriation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 9, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 20, 2011.

Ted Sturdevant
Director

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities** see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

~~((7))~~ (8) **Commercial, industrial, and institutional flows** means the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

~~((8))~~ (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

~~((9))~~ (10) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

~~((10))~~ (11) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

~~((11))~~ (12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

~~((12))~~ (13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

~~((13))~~ (14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

~~((14))~~ (15) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

~~((15))~~ (16) **Department** means the Washington state department of ecology.

~~((16))~~ (17) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

~~((17))~~ (18) Director means the director of the Washington state department of ecology or his or her authorized designee.

~~((18))~~ (19) Draft offer and applicant list means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

~~((19))~~ (20) Easement means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

~~((20))~~ (21) Effective date means the date the loan agreement is signed by the department's water quality program manager.

~~((21))~~ (22) Eligible cost means the portion of the facilities or activities project that can be funded.

~~((22))~~ (23) Energy efficiency projects means the use of improved technologies and practices to reduce the energy consumption of water quality projects as defined by the Environmental Protection Agency (EPA) under Green Project Reserve.

(24) Enforcement order means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((23))~~ (25) Engineering report means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((24))~~ (26) Environmental degradation means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((25))~~ (27) Environmental emergency means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~ (28) Environmentally innovative projects means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

(29) Estimated construction cost means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ (30) Existing need means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

~~((28))~~ (31) Existing residential need means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated

National Pollution Discharge Elimination System or state waste discharge permit.

~~((29))~~ (32) Facilities see water pollution control facility.

~~((30))~~ (33) Facilities plan means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

~~((31) Federal capitalization grant means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.~~

~~((32))~~ (34) Final offer and applicant list means a catalog of all projects considered and proposed for funding and those offered funding.

~~((33))~~ (35) Force account means loan project work performed using labor, materials, or equipment of a public body.

~~((34))~~ (36) Forgivable principal means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

(37) Funding category see "water pollution control activities funding category" and "water pollution control facilities funding category."

~~((35))~~ (38) Funding cycle means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

~~((36))~~ (39) General obligation debt means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((37))~~ (40) Green infrastructure projects means a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology.

(41) Green project reserves means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

(42) Indirect cost means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((38))~~ (43) Infiltration and inflow means water, other than wastewater, that enters a sewer system.

~~((39))~~ (44) Infiltration and inflow correction means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((40))~~ (45) Initiation of operation means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

~~((41))~~ (46) Intended use plan (IUP) means a document identifying the types of projects proposed and the amount of all money available for financial assistance from

the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

~~((42))~~ **(47) Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((43))~~ **(48) Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ **(49) Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ **(50) Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((46))~~ **(51) Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((47))~~ **(52) Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ **(53) Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ **(54) Principal forgiveness** means a loan made by the department using the water pollution control revolving fund under which some or all of the principal may be forgiven by the department, if allowable by Congress through federal appropriation.

(55) Project means a water quality improvement effort funded with a grant or loan.

~~((50))~~ **(56) Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ **(57) Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ **(58) Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ **(59) Recipient** means a public body that has an effective loan agreement with the department.

~~((54))~~ **(60) Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

~~((55))~~ **(61) Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((56))~~ **(62) Revolving fund** means the water pollution control revolving fund.

~~((57))~~ **(63) Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((58))~~ **(64) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((59))~~ **(65) Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((60))~~ **(66) Service area population** means the number of people served in the area of the project.

~~((61))~~ **(67) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ **(68) Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ **(69) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ **(70) State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ **(71) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ **(72) Total project cost** means the sum of all expenses associated with a water quality project.

~~((67))~~ **(73) Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water.

(74) Water pollution means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ **(75) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ **(76) Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

~~((70))~~ **(77) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((71))~~ **(78) Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

~~((72))~~ **(79) Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

~~((73))~~ **(80) Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-040 Water pollution control revolving fund (revolving fund) uses. The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.

(8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are consis-

tent with the Clean Water Act, 33 U.S.C. 1251-1387 as defined by the EPA and allowable by Congress through federal appropriation bills.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-100 Eligible. Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations (CAFO)** water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the growth management act;

(ii) **Storm water planning;**

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site septic systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) **Green project reserves** such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125 and as defined by EPA guidance, and allowed by Congress in federal appropriation bills.

(15) **Ground water protection activities** such as well-head protection and critical aquifer recharge area protection;

~~((15))~~ (16) **Hardship assistance** for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;

~~((16))~~ (17) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

~~((17))~~ (18) **Lake implementation and associated planning activities** on lakes with public access;

~~((18))~~ (19) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

~~((19))~~ (20) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;

~~((20))~~ (21) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((21))~~ (22) **Light refreshments** for meetings when preapproved by the department;

~~((22))~~ (23) **Monitoring BMP effectiveness;**

~~((23))~~ (24) **Monitoring equipment** used for water quality assessment;

~~((24))~~ (25) **Monitoring water quality;**

~~((25))~~ (26) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((26))~~ (27) **On-site septic systems:**

(a) **On-site septic system repair and replacement** for residential and small commercial systems;

(b) **On-site wastewater** system surveys;

(c) **Local loan fund** program development and implementation;

~~((27))~~ (28) **Planning** comprehensive basin, watershed, and area-wide water quality development;

~~((28))~~ (29) **Refinancing** of water pollution control facility debt;

~~((29))~~ (30) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((30))~~ (31) **Sales tax;**

~~((31))~~ (32) **Spare parts** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

~~((32))~~ (33) **Stream restoration projects;**

~~((33))~~ (34) **Total maximum daily load study** development and implementation;

~~((34))~~ (35) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

~~((35))~~ (36) **Transferring ownership** of a small wastewater system to a public body;

~~((36))~~ (37) **Wastewater or storm water utility development;**

~~((37))~~ (38) **Wastewater or storm water utility rate** or development impact fee studies;

~~((38))~~ (39) **Water quality education** and stewardship programs.

NEW SECTION**WAC 173-98-125 Green project reserves projects.**

When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

(1) **Water efficiency.** Water efficiency is the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency projects can be stand-alone projects, and they do not need to be part of a larger capital improvement project.

(2) **Energy efficiency.** Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects. Energy efficiency projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure includes a wide array of practices at multiple scales that manage and treat storm water and maintain and restore natural hydrology. Green infrastructure projects can be stand-alone projects and they do not need to be part of a larger capital improvement project.

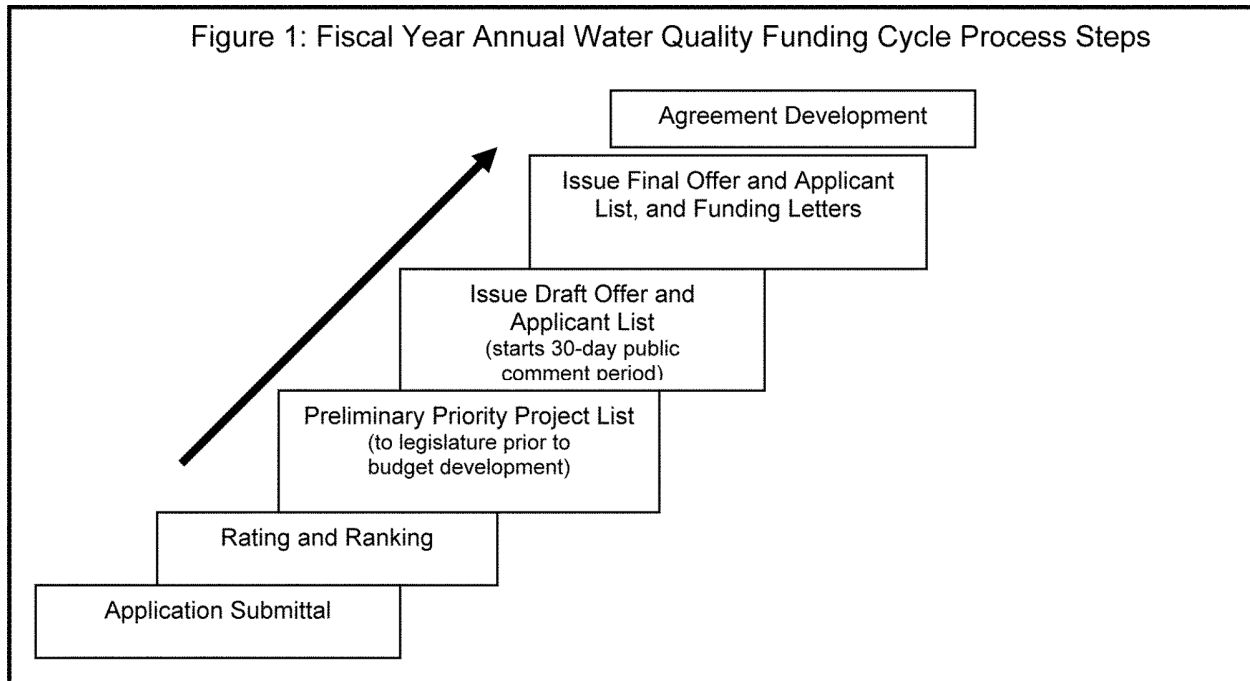
(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

(4) **Environmentally innovative projects.** Environmentally innovative projects demonstrate new or innovative approaches to managing water quality issues in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.



(2) In general, ecology will provide the following services although annual modifications may be made to accommodate varying schedules and requirements:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature for budget consideration;
- (i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;
- (j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;

(k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;

- (l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-300 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
 - (b) Existing residential need at the time of application; and
 - (c) Level of financial burden placed on the ratepayers.
- (2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of

the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;
- (vii) Other grants;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and
- (xi) Median household income;

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-310 On-site septic system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Forgivable principal loans may be provided with revolving funds as specified in WAC 173-98-330. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Below 50% county MHI	Up to 15% of MR	0%	Severe

((Figure 4.))

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

(2) **Figure 7. Forgivable principal hardship continuum** (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but Below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to MHI)
Loan Hardship-Funding Continuum	Not eligible for forgivable principal loan	50% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	75% forgivable principal loan up to ceiling amount defined in WAC 173-98-520	100% forgivable principal loan up to ceiling amount defined in WAC 173-98-520

(3) The department will limit the amount of forgivable principal to a maximum of fifty percent of total eligible costs for a green project reserves project. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding for the green project reserves category.

- (a) Homeowner income:
 - (i) Above 80% of county MHI
 - (ii) 50 to 80% of county MHI
 - (iii) Below 50% of county MHI
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above \$100,000
 - (ii) \$50,000 to \$100,000
 - (iii) Below \$50,000

NEW SECTION

WAC 173-98-330 Forgivable principal. (1) **Forgivable principal.** The department will apply the funding hardship continuum provided in figure 7 below to determine the amount of forgiveness principal. Financial hardship will be determined based on the provisions in WAC 173-98-300.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply:

Figure 6.

Applicant information:
<ul style="list-style-type: none"> • Service area population < 25,000 • Sewer user rates are 3% to below 5% of the median household income
Applicant MAY be eligible for:
<ul style="list-style-type: none"> • 20-year repayment term at a 1% interest rate • Up to 75% of the loan principal may be forgiven based on existing residential need

The interest rate in the example in figure 6 represents twenty percent of the average market rate for tax-exempt municipal bonds.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

- (a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and
- (b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or 173-98-3010 for hardship interest rates.

Figure ((6)) 8: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-500 Funding categories. (1) The revolving fund is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under section 320 of the act (National Estuary Program) and section 319 of the act, the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

(3) The capitalization grant for federal fiscal year 2010 includes conditions for funding additional subsidization and green project reserves which creates new funding set aside for these specific purposes:

(a) Additional subsidization in the form of forgivable principal: Allowable amounts are based on minimums and maximums established in the 2010 Title VI appropriation.

(b) Green project reserves: Not less than twenty percent of the capitalization grant is dedicated for green project reserves.

(4) Additional subsidization in the form of forgivable principal and reduced interest rates may be provided for eligible green project reserves projects.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-520 Ceiling amounts. (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund monies, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

(6) The ceiling amount for forgivable principal provided for financial hardship for WAC 173-98-330 is five million dollars.

(7) Green project reserves category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(8) The ceiling amount for forgivable principal provided for eligible green project reserves projects is fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully utilize available funding.

WSR 11-10-004

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-73—Filed April 21, 2011, 10:54 a.m., effective April 21, 2011, 10:54 a.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Y; and amending WAC 232-28-619.

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

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

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

Reasons for this Finding: Extends the spring chinook sport fishery for an additional seven days in the area above Bonneville Dam. Chinook remain available on the preupdate harvest guideline. Continues to stipulate that the hatchery adult bag limit in Deep River is consistent with the adjacent Columbia River when both areas are open. Continues to include rules that prohibit full removal of nonlegal fish from the water. Regulation is consistent with guidance from Washington fish and wildlife commission and director and joint state action of February 8 and April 20, 2011. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington

(WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: April 21, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Columbia River:**

i. From Tower Island power lines in Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations): Effective April 25 through May 1, 2011: daily salmonid limit is 6 fish, (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook.

ii. Effective immediately through June 15, 2011: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

2. **Deep River (Wahkiakum Co.):** Effective immediately through June 15, 2011: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900Y Exceptions to statewide rules—Columbia River. (11-65)

WSR 11-10-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-74—Filed April 21, 2011, 10:55 a.m., effective April 21, 2011, 7:00 p.m.]

Effective Date of Rule: April 21, 2011, 7:00 p.m.

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

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

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

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

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

Reasons for this Finding: Rescinds fishing periods in the spring select area commercial fisheries scheduled for April 21-26. Around half of the two hundred upriver chinook allocated to select area fisheries have been caught. Rescinding fishing periods for the remainder of this week and the early part of next week will avoid additional handle and allow time for upriver fish to clear the select areas, which would likely allow the fishery to continue into May and June without further interruption. Impacts to ESA-listed salmon are expected to be within ESA limits. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 8 and April 20, 2011. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: April 21, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000V Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and

Select Areas, except during the times and conditions listed below:

1. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: Open hours are: 7:00 p.m. Sundays to 7:00 a.m. Mondays, and 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays immediately through June 9, 2011, except closed April 24-25, 2011.

c) Gear: Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations in conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010(17)). Nets (or parts of nets) not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff. A sampling station will be established approximately 2 miles downstream of the Highway 4 Bridge near Stephan's dock.

f) 24-hour quick reporting in effect for Washington buyers.

2. Tongue Point/South Channel

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island, (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of

Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 28 through June 10, 2011.

c) Gear: Gillnets. In the Tongue Point fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Through May 20, 2011, transportation or possession of fish outside the fishing area is unlawful (except while in transit to ODFW sampling stations) until ODFW staff has biologically sampled individual catches. A sampling station will be established near the Tongue Point area. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 23, fishers are required to call 503-428-0518 and leave a message including name, catch, and where and when fish will be sold.

f) 24-hour quick reporting in effect for Washington buyers.

3. Blind Slough/Knappa Slough Select Area

a) Area: Only the Blind Slough area is open during winter season, and both Blind Slough and Knappa Slough areas are open during spring season. From May 2 through June 10, 2011, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (Fall season boundary).

b) Dates: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays immediately through June 10, 2011, except closed April 21-22 and April 25-26, 2011.

c) Gear: Gillnets. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d) Allowable sales: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers. Permanent transportation rules in effect.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. April 21, 2011:

WAC 220-33-01000U Columbia River seasons below Bonneville. (11-54)

**WSR 11-10-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-75—Filed April 25, 2011, 2:10 p.m., effective April 25, 2011, 2:10 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600G; and amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Special management area openings are in line with management measures provided for in state-tribal harvest management plans for 2010-11 season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 25, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600I Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) Klipsan Beach and the U.S./Canada Border, including Grays Harbor: Open.

(4) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

- Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.
- Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.
- Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.
- Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(5) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2011. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.
- Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(6) It is unlawful for a vessel to use more than 100 pots in the Quileuete SMA from 8:00 a.m. May 1, 2011 through 8:00 a.m. June 1, 2011. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- Email to Carol Henry at: Carol.Henry@dfw.wa.gov or
- Telephone call to: Carol Henry at 360-249-1296

(7) All other provisions of the permanent rule remain in effect.

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 unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600G Coastal crab seasons (11-26)

WSR 11-10-025
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 27, 2011, 9:12 a.m., effective May 1, 2011]

Effective Date of Rule: May 1, 2011.

Purpose: The division of child support (DCS) is amending sections in chapter 388-14A WAC, to implement SSB 6893 (61st legislature 2010, 2nd sp. sess.), which amended RCW 26.23.035(5) by suspending the child support pass-through as of May 1, 2011. Although DCS has filed the CR-101, preproposal statement of interest, as WSR 11-07-081, but will be unable to complete the regular adoption process by the effective date. DCS is adopting emergency rules at this time, but continues with the regular rule-making process and will adopt final rules as soon as possible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-5015 and 388-14A-5100.

Statutory Authority for Adoption: RCW 26.23.035 (as modified by SSB 6893, 61st legislature 2010, 2nd sp. sess.), RCW 34.05.350 (1)(c) and 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: For budgetary reasons, the legislature adopted SSB 6893 (61st legislature 2010, 2nd sp.

sess.), which amended RCW 26.23.035(5) by suspending the child support pass-through as of May 1, 2011.

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

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

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

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

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

Date Adopted: April 21, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5015 What is a pass-through payment? (1) Between October 1, 2008 and April 30, 2011, the division of child support (DCS) passed through a portion of child support collections to a family receiving TANF.

(2) A pass-through payment ~~((is))~~ was the portion of a support collection applied to assigned support that the state ~~((elects))~~ elected to pay to a family ~~((currently))~~ receiving TANF at the time the collection was received. The pass-through payment ~~((is))~~ was paid in the following amounts:

(a) Up to one hundred dollars per month to a family with one child in the assistance unit.

(b) Up to two hundred dollars per month to a family with two or more children in the assistance unit.

~~((2))~~ (3) The pass-through ~~((is))~~ was paid from collections ~~((which are))~~ distributed to either current support or assigned arrears.

~~((3))~~ (4) The pass-through amount ~~((can never))~~ for any month could not exceed the amount collected in ~~((the))~~ that month.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5100 How does the division of child support notify the custodial parent about support collections? (1) The division of child support (DCS) mails a distribution and disbursement statement once each month to the last known address of a person for whom it received a support collection during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the distribution and disbursement statement:

(a) The amount of support collections DCS received and the date of collection;

(b) A description of how DCS distributed each support collection between current support and the support debt and any fees required by state or federal law;

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable;

(d) The amount kept by the state to repay public assistance paid to the family;

(e) The amount disbursed to the family as a pass-through payment under WAC 388-14A-5015 for collections received between October 1, 2008 and April 30, 2011;

(f) The amount disbursed to the family as a payment on support owed to the family;

(g) The amount kept by the state to pay the twenty-five dollar annual fee, if applicable; and

(h) The amount kept by the state to repay child support paid to the family in error.

(3) The person to whom a distribution and disbursement statement is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the statement to contest how DCS distributed the support collections, and must make specific objections to the statement. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested statement.

(a) There is no hearing right regarding fees that have been charged on a case.

(b) If a custodial parent (CP) wants to request a hardship waiver of the fee, the CP may request a conference board under WAC 388-14A-6400.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a distribution and disbursement statement to a recipient of payment services only.

WSR 11-10-026

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed April 27, 2011, 9:18 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating the following optional medical service(s): State payment of medicare prescription drug copayments for full-benefit dual-eligible clients.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-517-0500.

Statutory Authority for Adoption: RCW 74.08.090.

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. This emergency rule is necessary to continue the current emergency rule adopted under WSR 11-02-029 while the permanent rule-making process is completed. A CR-102 has been submitted for filing with the code reviser and MPA anticipates the public hearing to take place by June 7, 2011.

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

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

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

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

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

Date Adopted: April 19, 2011.

Katherine I. Vasquez

Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-517-0500

State payment of medicare prescription drug copayments for full-benefit dual-eligible clients.

WSR 11-10-027
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed April 27, 2011, 9:22 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating the following optional medical service(s) for adults twenty-one years of age and older: Hearing devices to include hearing aids, bone anchored hearing aids (BAHA), cochlear implants, and parts and batteries for such equipment, including repairs.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-547-0300, 388-547-0400, 388-547-0500 and 388-547-0600; and amending WAC 388-547-0100, 388-547-0700, and 388-547-0800.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding is no longer available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. This emergency rule is necessary to continue the current emergency rule adopted under WSR 11-02-025 while the permanent rule-making process is completed. A CR-102 has been filed with the code reviser as WSR 11-07-076 and a public hearing is scheduled for April 26, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 4.

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 4.

Date Adopted: April 19, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-12-034, filed 5/27/09, effective 7/1/09)

WAC 388-547-0100 Hearing aids—General—For clients twenty-years of age and younger. Unless otherwise defined in WAC 388-547-0200, the terms within this chapter are intended to correspond with the terms in chapter 18.35 RCW.

(1) The department covers the hearing aids ~~((services))~~ listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter. See also WAC 388-531-0375 audiology services.

(2) The department pays for hearing aids ~~((and services))~~ when:

(a) Covered ~~((Refer to WAC 388-547-0400 for covered hearing aids and services for clients twenty one years of age and older, and refer to WAC 388-547-0800 for covered hearing aids and services for clients twenty years of age and younger))~~;

(b) Within the scope of an eligible client's medical care program;

(c) Medically necessary as defined under WAC 388-500-0005;

(d) Authorized, as required within this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda; and

(e) Billed according to this chapter, chapters 388-501 and 388-502, and the department's published billing instructions and numbered memoranda; and

(f) The client ~~((~~ is twenty years of age or younger and completes a hearing evaluation, including an audiogram and/or developmentally appropriate diagnostic physiologic test results performed and/or interpreted by a hearing healthcare professional ~~))~~;

~~((ii) Is referred by a hearing healthcare professional for a hearing aid; and~~

~~((iii) For clients twenty one years of age and older only, has an average degree of hearing loss at forty five decibels (dBHL) in the better ear based on a pure tone audiometric evaluation by a licensed audiologist or licensed hearing instrument fitter/dispenser at one thousand, two thousand, three thousand, and four thousand hertz (Hz) with effective masking as indicated))~~.

(3) The department requires prior authorization for covered hearing aids ~~((services))~~ when the clinical criteria set forth in this chapter are not met. The department evaluates

these requests on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 09-12-034, filed 5/27/09, effective 7/1/09)

WAC 388-547-0700 Hearing aids—Eligibility—Clients twenty years of age and younger. (1) Clients twenty years of age and younger who are receiving services under ~~((any))~~ a medical assistance program ~~((except for the family planning only program and the TAKE CHARGE program))~~:

(a) Are eligible for covered hearing aids ~~((and services))~~ under this chapter and for the audiology services under WAC ~~((388-545-0700))~~ 388-531-0375;

(b) Must have a complete hearing evaluation, including an audiogram and/or developmentally appropriate diagnostic physiologic test results performed by a hearing healthcare professional; and

(c) Must be referred by a licensed audiologist, otorhinolaryngologist or otologist for a hearing aid.

(2) Clients who are enrolled in a department-contracted managed care ~~((plan))~~ organization (MCO) are eligible under fee-for-service for covered hearing aid services that are not covered by their plan, subject to the provisions of this chapter and other applicable WAC. However, clients enrolled in a department-contracted MCO must obtain replacement parts for cochlear implants and bone anchored hearing aids (BAHA) through their MCO.

AMENDATORY SECTION (Amending WSR 09-12-034, filed 5/27/09, effective 7/1/09)

WAC 388-547-0800 Hearing aids—~~((Covered services))~~ Coverage—Clients twenty years of age and younger. (1) The department covers new, nonrefurbished, monaural or binaural hearing aid(s), which includes the ear mold, for eligible clients twenty years of age and younger. In order for the provider to receive payment, the hearing aid must meet the client's specific hearing needs and be under warranty for a minimum of one year.

(2) The department pays for the following replacements as long as the need for replacement is not due to the client's carelessness, negligence, recklessness, or misuse in accordance with WAC 388-501-0050(8):

(a) ~~((Replacement))~~ Hearing aid(s), which includes the ear mold, when:

(i) The client's hearing aid(s) are:

- (A) Lost;
- (B) Beyond repair; or
- (C) Not sufficient for the client's hearing loss; and

(ii) All warranties are expired.

(b) ~~((Replacement))~~ Ear mold(s) when the client's existing ear mold is damaged or no longer fits the client's ear.

~~((e))~~ (3) The department pays for repairs as follows:

(a) A maximum of two repairs, per hearing aid, per year, when the repair is less than fifty percent of the cost of a new hearing aid. To receive payment, all of the following must be met:

(i) All warranties are expired; and

(ii) The repair is under warranty for a minimum of ninety days.

~~((d))~~ (b) A rental hearing aid(s) for up to two months while the client's own hearing aid is being repaired. In the case of a rental hearing aid(s), the department pays separately for an ear mold(s).

(4) The department pays for unilateral cochlear implant and osseointegrated hearing aids (BAHA) replacement parts when:

(a) The manufacturer's warranty has expired;

(b) The part is for immediate use, not a back-up part;

(c) The part needs to be replaced due to normal wear and tear and is not related to misuse or abuse of the item (see WAC 388-502-0160); and

(d) The part is not an external speech processor.

(5) The department covers for one cochlear implant external speech processor, including maintenance and repair.

(6) The department covers one BAHA speech processor, including maintenance and repair.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-547-0300	Hearing aids—Eligibility—Clients twenty-one years of age and older.
WAC 388-547-0400	Hearing aids—Covered services—Clients twenty-one years of age and older.
WAC 388-547-0500	Hearing aids—Noncovered services—Clients twenty-one years of age and older.
WAC 388-547-0600	Hearing aids—Prior authorization—Clients twenty-one years of age and older.

WSR 11-10-028

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 27, 2011, 9:28 a.m., effective April 29, 2011]

Effective Date of Rule: April 29, 2011.

Purpose: The purpose of the new language in chapters 388-71, 388-112, 388-829A, and 388-829C WAC is to implement and clarify the training requirements and the criminal history background check requirements as directed in chapter 74.39A RCW. These rules were originally filed as an emergency CR-103 as WSR 11-02-033, effective January 1, 2011. This emergency rule filing will extend these emergency rules beyond April 28, 2011. Chapter 74.39A RCW requires training for long-term care workers which includes seventy-five hours of entry-level training and also requires federal and state criminal history background checks for all

long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-05665, 388-71-05670, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-71-05695, 388-71-05700, 388-71-05705, 388-71-05710, 388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05855, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-112-0025, 388-112-0030, 388-112-0050, 388-112-0060, 388-112-0065, 388-112-0080, 388-112-0085, 388-112-0090, 388-112-0095, 388-112-0100, 388-112-0105, 388-112-0245, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630, and 388-112-0375; and amending WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0560, 388-112-0001, 388-112-0003, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0055, 388-112-0070, 388-112-0075, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0125, 388-112-0130, 388-112-0135, 388-112-0140, 388-112-0145, 388-112-0150, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0195, 388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0230, 388-112-0235, 388-112-0240, 388-112-0255, 388-112-0260, 388-112-0270, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, 388-112-0410, 388-829A-050, and 388-829C-040.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, Washington state 2009-11 budget (ESHB 1244, 206(5)).

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: Emergency adoption of these rules is necessary in order to comply with state law which requires implementation of these training rules by January 1, 2011. These rules were to be adopted by August 1, 2010. However, given the significant number of stakeholder comments received after the CR-102 hearing, the department needed to fully vet the additional comments and thus the rules could not be adopted by August 1, 2010. They were adopted as emergency rules in order to comply with the January 1, 2011, legislatively mandated date for implementation. This

emergency rule filing will extend these emergency rules beyond April 28, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 83, Amended 67, Repealed 74.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 83, Amended 67, Repealed 74.

Date Adopted: April 15, 2011.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-12 issue of the Register.

WSR 11-10-029
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed April 27, 2011, 9:33 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating optional medical services from program benefit packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental. Chapter 388-531 WAC is being amended to include medical services previously listed in the programs to be eliminated that are necessary to, and included within, appropriate mandatory medical services under federal statutes and rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-531-0100, 388-531-0150, 388-531-0200, 388-531-0250, 388-531-0400, 388-531-1000, and 388-531-1300.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 209(1), chapter 37, Laws of 2010 (ESSB 6444).

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; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a

rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding is no longer available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. This emergency rule is necessary to continue the current emergency rule adopted under WSR 11-02-027 while the permanent rule-making process is completed. MPA has filed a CR-101 under WSR 10-20-160 to begin the permanent rule-making process and anticipates filing the CR-102 in May 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 0.

Date Adopted: April 19, 2011.

Katherine I. Vasquez
Rules Coordinator

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

WSR 11-10-030
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed April 27, 2011, 9:35 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is elim-

inating the following optional medical service(s) for adults twenty-one years of age and older: Eyeglass frames, lenses, and contact lenses.

Citation of Existing Rules Affected by this Order: Amending WAC 388-544-0100, 388-544-0250, 388-544-0300, 388-544-0325, 388-544-0350, 388-544-0400, 388-544-0500, 388-544-0550, and 388-544-0575.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding is no longer available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. This emergency rule is necessary to continue the current emergency rule adopted under WSR 11-02-024 while the permanent rule-making process is completed. A CR-102 has been filed with the code reviser as WSR 11-07-082 and a public hearing is scheduled for April 26, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Date Adopted: April 19, 2011.

Katherine I. Vasquez
Rules Coordinator

VISION CARE- CLIENTS TWENTY YEARS OF AGE AND YOUNGER

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0100 Vision care—Eligible clients—Twenty years of age and younger. This section applies to eligible clients who are twenty years of age and younger.

(1) Vision care ((services are)) is available to clients who are eligible for services under the following medical assistance programs ((only)):

- (a) Categorically needy program (CN or CNP);
- (b) Categorically needy program - state children's health insurance program (CNP-SCHIP);
- (c) Children's healthcare programs as defined in WAC 388-505-0210;
- (d) Limited casualty program - medically needy program (LCP-MNP);

(e) Disability lifeline (formerly general assistance (GA-U/ADATSA)) (within Washington state or designated border cities); and

(f) ~~((Emergency medical only programs when the services are directly related to an))~~ Alien emergency medical (AEM) as described in WAC 388-438-0115, when the medical services are necessary to treat a qualifying emergency medical condition only.

(2) Eligible clients who are enrolled in a department contracted managed care organization (MCO) are eligible under fee-for-service for covered vision care ((services)) that are not covered by their plan and subject to the provisions of this chapter and other applicable WAC.

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0250 Vision care—Covered eye services (examinations, refractions, visual field testing, and vision therapy). ~~((1) The department covers, without prior authorization, eye examinations and refraction services with the following limitations:~~

- ~~(a) Once every twenty four months for asymptomatic clients twenty one years of age or older;~~
- ~~(b) Once every twelve months for asymptomatic clients twenty years of age or younger; or~~
- ~~(c) Once every twelve months, regardless of age, for asymptomatic clients of the division of developmental disabilities.~~

~~(2) The department covers additional examinations and refraction services outside the limitations described in subsection (1) of this section when:~~

- ~~(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease;~~
- ~~(b) The client is on medication that affects vision; or~~
- ~~(c) The service is necessary due to lost or broken eye glasses/contacts. In this case:~~

~~(i) No type of authorization is required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(ii) Providers must follow the department's expedited prior authorization process to receive payment for clients twenty one years of age or older. Providers must also document the following in the client's file:~~

- ~~(A) The eyeglasses or contacts are lost or broken; and~~
- ~~(B) The last examination was at least eighteen months ago.~~

~~(3) The department covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. Providers must document all of the following in the client's record:~~

- ~~(a) The extent of the testing;~~
 - ~~(b) Why the testing was reasonable and necessary for the client; and~~
 - ~~(c) The medical basis for the frequency of testing.~~
- ~~(4) The department covers orthoptics and vision training therapy. Providers must obtain prior authorization from the department.) See WAC 388-531-1000 Ophthalmic services.~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0300 Vision care—Covered eyeglasses (frames and/or lenses) and repair ((services))—Clients twenty years of age and younger. This section applies to eligible clients who are twenty years of age and younger.

(1) The department covers eyeglasses, without prior authorization, ~~((as follows:~~

~~(a))~~ once every twelve months for eligible clients when the following clinical criteria are met:

- ~~((i))~~ (a) The eligible client has a stable visual condition;
- ~~((ii))~~ (b) The eligible client's treatment is stabilized;
- ~~((iii))~~ (c) The prescription is less than eighteen months old; and

~~((iv))~~ (d) One of the following minimum correction needs in at least one eye is documented in the client's file:

~~((A))~~ (i) Sphere power equal to, or greater than, plus or minus 0.50 diopter;

~~((B))~~ (ii) Astigmatism power equal to, or greater than, plus or minus 0.50 diopter; or

~~((C))~~ (iii) Add power equal to, or greater than, 1.0 diopter for bifocals and trifocals.

~~((b) With the following limitations:~~

~~(i) Once every twenty four months for clients twenty one years of age or older;~~

~~(ii) Once every twelve months for clients twenty years of age or younger; or~~

~~(iii) Once every twelve months, regardless of age, for clients of the division of developmental disabilities.)~~

(2) The department covers eyeglasses (frames/lenses), ~~((without prior authorization.))~~ for eligible clients ((who are twenty years of age or younger)) with a diagnosis of accommodative esotropia or any strabismus correction, without prior authorization. In this case, the limitations of subsection (1) of this section do not apply.

(3) The department covers one pair of back-up eyeglasses for eligible clients who wear contact lenses as their primary visual correction aid (see WAC 388-544-0400(1)) ~~((with the following limitations:~~

(a) ~~Once every six years for clients twenty years of age or older;~~

~~(b)) limited to once every two years for eligible clients twenty years of age or younger ((or regardless of age for clients of the division of developmental disabilities)).~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0325 Vision care—Covered eyeglass frames—Clients twenty years of age and younger. This section applies to eligible clients who are twenty years of age and younger.

(1) The department covers durable or flexible frames, without prior authorization, when the eligible client has a diagnosed medical condition that has contributed to two or more broken eyeglass frames in a twelve-month period. To receive payment, the provider must:

(a) Follow the department's expedited prior authorization process; and

(b) Order the "durable" or "flexible" frames through the department's designated supplier.

(2) The department covers all of the following for eligible clients without prior authorization:

(a) Coating contract eyeglass frames to make the frames nonallergenic. Eligible clients must have a medically diagnosed and documented allergy to the materials in the available eyeglass frames.

(b) Incidental repairs to a client's eyeglass frames. To receive payment, all of the following must be met:

(i) The provider typically charges the general public for the repair or adjustment;

(ii) The contractor's one year warranty period has expired; and

(iii) The cost of the repair does not exceed the department's cost for replacement frames and a fitting fee(~~and~~

~~(iv) The frequency of the repair does not exceed two per client in a six month period. This limit does not apply to clients twenty years of age or younger or to clients of the division of developmental disabilities, regardless of age.~~

~~(3) The department covers replacement eyeglass frames that have been lost or broken as follows:~~

~~(a) No type of authorization is required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(b) To receive payment for clients twenty one years of age or older, excluding clients of the division of developmental disabilities, providers must follow the department's expedited prior authorization process).~~

(c) Replacement eyeglass frames that have been lost or broken.

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0350 Vision care—Covered eyeglass lenses ((and services))—Clients twenty years of age and younger. This section applies to eligible clients who are twenty years of age and younger.

(1) The department covers the following plastic scratch-resistant eyeglass lenses without prior authorization:

(a) Single vision lenses;

(b) Round or flat top D-style bifocals;

(c) Flat top trifocals; and

(d) Slab-off and prism lenses (including Fresnel lenses).

(2) Eyeglass lenses, as described in subsection (1) of this section must be placed into a frame that is, or was, purchased by the department.

(3) The department covers, without prior authorization, the following lenses for eligible clients when the clinical criteria are met:

(a) High index lenses. Providers must follow the department's expedited prior authorization process. The eligible client's medical need in at least one eye must be diagnosed and documented as:

(i) A spherical refractive correction of plus or minus six diopters or greater; or

(ii) A cylinder correction of plus or minus three diopters or greater.

(b) Plastic photochromatic lenses. The eligible client's medical need must be diagnosed and documented as ocular albinism or retinitis pigmentosa.

(c) Polycarbonate lenses. The eligible client's medical need must be diagnosed and documented as one of the following:

(i) Blind in one eye and needs protection for the other eye, regardless of whether a vision correction is required;

(ii) Infants and toddlers with motor ataxia;

(iii) Strabismus or amblyopia (~~for clients twenty years of age or younger; or~~

~~(iv) For clients of the division of developmental disabilities)).~~

(d) Bifocal lenses to be replaced with single vision or trifocal lenses, or trifocal lenses to be replaced with bifocal or single vision lenses when:

(i) The eligible client has attempted to adjust to the bifocals or trifocals for at least sixty days; and

(ii) The eligible client is unable to make the adjustment; and

(iii) The trifocal lenses being replaced are returned to the provider.

(4) The department covers, without prior authorization, the tinting of plastic lenses when the eligible client's medical need is diagnosed and documented as one or more of the following chronic (expected to last longer than three months) eye conditions causing photophobia:

(a) Blindness;

(b) Chronic corneal keratitis;

(c) Chronic iritis, iridocyclitis;

(d) Diabetic retinopathy;

(e) Fixed pupil;

(f) Glare from cataracts;

(g) Macular degeneration;

(h) Migraine disorder;

(i) Ocular albinism;

(j) Optic atrophy and/or optic neuritis;

(k) Rare photo-induced epilepsy conditions; or

(l) Retinitis pigmentosa.

(5) The department covers replacement lenses for eligible clients without prior authorization when the lenses are lost or broken (~~as follows:~~

~~(a) No type of authorization is required for clients twenty years of age and younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(b) Providers must follow the expedited prior authorization process to receive payment for clients twenty-one years of age or older).~~

(6) The department covers replacement lenses, without prior authorization, when the eligible client meets one of the clinical criteria. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:

(a) Eye surgery or the effects of prescribed medication or one or more diseases affecting vision:

(i) The client has a stable visual condition;

(ii) The client's treatment is stabilized;

(iii) The lens correction must have a 1.0 or greater diopter change between the sphere or cylinder correction in at least one eye; and

(iv) The previous and new refraction are documented in the client's record.

(b) Headaches, blurred vision, or visual difficulty in school or at work. In this case, all of the following must be documented in the client's file:

(i) Copy of current prescription (less than eighteen months old);

(ii) Date of last dispensing, if known;

(iii) Absence of a medical condition that is known to cause temporary visual acuity changes (e.g., diabetes, pregnancy, etc.); and

(iv) A refractive change of at least .75 diopter or greater between the sphere or cylinder correction in at least one eye.

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0400 Vision care—Covered contact lenses ~~(and services)~~—Clients twenty years of age and younger. This section applies to eligible clients who are twenty years of age and younger.

(1) The department covers contact lenses, without prior authorization, as the eligible client's primary refractive correction method when the eligible client has a spherical correction of plus or minus 6.0 diopters or greater in at least one eye. See subsection (4) of this section for exceptions to the plus or minus 6.0 diopter criteria. The spherical correction may be from the prescription for the glasses or the contact lenses and may be written in either "minus cyl" or "plus cyl" form.

(2) The department covers the following contact lenses with limitations:

(a) Conventional soft contact lenses or rigid gas permeable contact lenses that are prescribed for daily wear; or

(b) Disposable contact lenses that are prescribed for daily wear and have a monthly or quarterly planned replacement schedule, as follows:

(i) Twelve pairs of monthly replacement contact lenses;

or
(ii) Four pairs of three-month replacement contact lenses.

(3) The department covers soft toric contact lenses, without prior authorization, for eligible clients with astigmatism when the following clinical criteria are met:

(a) The eligible client's cylinder correction is plus or minus 1.0 diopter in at least one eye; and

(b) The eligible client meets the spherical correction listed in subsection (1) of this section.

(4) The department covers contact lenses, without prior authorization, when the following clinical criteria are met. In these cases, the limitations in subsection (1) of this section do not apply.

(a) For eligible clients diagnosed with high anisometropia.

(i) The eligible client's refractive error difference between the two eyes is at least plus or minus 3.0 diopters between the sphere or cylinder correction; and

(ii) Eyeglasses cannot reasonably correct the refractive errors.

(b) Specialty contact lens designs for eligible clients who are diagnosed with one or more of the following:

(i) Aphakia;

(ii) Keratoconus; or

(iii) Corneal softening.

(c) Therapeutic contact bandage lenses only when needed immediately after eye injury or eye surgery.

(5) The department covers replacement contact lenses ~~(; limited to once every twelve months,))~~ for eligible clients when lost or damaged ~~((as follows:~~

~~(a) Authorization is not required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(b) Providers must follow the expedited prior authorization process to receive payment for clients twenty-one years of age or older.~~

~~(6) The department covers replacement contact lenses when all of the clinical criteria are met:~~

~~(a) The clinical criteria are:~~

~~(i) One of the following caused the vision change:~~

~~(A) Eye surgery;~~

~~(B) The effect(s) of prescribed medication; or~~

~~(C) One or more diseases affecting vision.~~

~~(ii) The client has a stable visual condition;~~

~~(iii) The client's treatment is stabilized; and~~

~~(iv) The lens correction has a 1.0 or greater diopter change in at least one eye between the sphere or cylinder correction. The previous and new refraction must be documented in the client's record.~~

~~(b) No type of authorization is required for clients twenty years of age and younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(c) To receive payment for clients twenty-one years of age or older, providers must follow the expedited prior authorization process)).~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0500 Vision care—Covered ocular prosthetics. ~~((The department covers ocular prosthetics when provided by any of the following:~~

(1) An ophthalmologist;
 (2) An ophthalmologist; or
 (3) An optometrist who specializes in prosthetics)) See
WAC 388-531-1000 Ophthalmic services.

AMENDATORY SECTION (Amending WSR 08-14-052,
 filed 6/24/08, effective 7/25/08)

WAC 388-544-0550 Vision care—Covered eye surgery. ~~((1) The department covers cataract surgery, without prior authorization, when the following clinical criteria are met:~~

~~(a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or
 (b) One or more of the following conditions:
 (i) Dislocated or subluxated lens;
 (ii) Intraocular foreign body;
 (iii) Ocular trauma;
 (iv) Phacogenic glaucoma;
 (v) Phacogenic uveitis;
 (vi) Phacoanaphylactic endophthalmitis; or
 (vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.~~

~~(2) The department covers strabismus surgery as follows:~~

~~(a) For clients seventeen years of age and younger. The provider must clearly document the need in the client's record. The department does not require authorization for clients seventeen years of age and younger; and
 (b) For clients eighteen years of age and older, when the clinical criteria are met. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:~~

~~(i) The client has double vision; and
 (ii) The surgery is not being performed for cosmetic reasons.~~

~~(3) The department covers blepharoplasty or blepharoptosis surgery when all of the clinical criteria are met. To receive payment, providers must follow the department's expedited prior authorization process. The clinical criteria are:~~

~~(a) The client's excess upper eyelid skin is blocking the superior visual field; and
 (b) The blocked vision is within ten degrees of central fixation using a central visual field test)) See WAC 388-531-1000 Ophthalmic services.~~

~~(a) The client's excess upper eyelid skin is blocking the superior visual field; and
 (b) The blocked vision is within ten degrees of central fixation using a central visual field test)) See WAC 388-531-1000 Ophthalmic services.~~

AMENDATORY SECTION (Amending WSR 08-14-052,
 filed 6/24/08, effective 7/25/08)

WAC 388-544-0575 Vision care—Noncovered ~~(services))~~ eyeglasses~~((s))~~ and contact lenses. (1) The department does not cover the following:

(a) Executive style eyeglass lenses;
 (b) Bifocal contact lenses;
 (c) Daily and two week disposable contact lenses;
 (d) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;
 (e) Custom colored contact lenses;
 (f) ~~((Services for cosmetic purposes only;~~
 (g)) Glass lenses;

~~((h) Group vision screening for eyeglasses;
 (i)) (g) Nonglare or anti-reflective lenses;
 ((f)) (h) Progressive lenses;
 ((k) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens corrections. This does not include intraocular lens implantation following cataract surgery.~~

~~(4)) (i) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");~~

~~((m)) (j) Upgrades at private expense to avoid the department's contract limitations (e.g., frames that are not available through the department's contract or noncontract frames or lenses for which the client or other person pays the difference between the department's payment and the total cost).~~

(2) An exception to rule (ETR), as described in WAC 388-501-0160, may be requested for a noncovered service.

WSR 11-10-031

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed April 27, 2011, 9:40 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating nonemergency dental and dental-related services for clients twenty-one years of age and older. Clients who are classified as developmentally disabled under RCW 71A.10.020 who are twenty-one years of age and older will continue to receive dental-related services under chapter 388-535 WAC. In addition, the rules meet targeted budget expenditure levels under sections 201 and 209 of the operating budget for fiscal years 2010 and 2011.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 388-535-1247, 388-535-1255, 388-535-1257, 388-535-1259, 388-535-1261, 388-535-1263, 388-535-1266, 388-535-1267, 388-535-1269, 388-535-1271 and 388-535-1280; and amending WAC 388-535-1060, 388-535-1065, 388-535-1079, 388-535-1080, 388-535-1082, 388-535-1084, 388-535-1086, 388-535-1088, 388-535-1090, 388-535-1092, 388-535-1094, 388-535-1096, 388-535-1098, 388-535-1099, 388-535-1100, 388-535-1220, 388-535-1350, 388-535-1400, 388-535-1450, and 388-535-1500.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 209(1), chapter 37, Laws of 2010 (ESSB 6444); sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

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 per-

manent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid programs for the majority of DSHS clients. The rule continues the emergency rule filed under WSR 11-02-10 [11-02-030] on December 19 [29], 2010, to comply with Executive Order 10-04, and also continues the emergency rule filed under WSR 10-22-053 on October 28, 2010, that complies with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. CR-101s were filed under WSR 09-14-093 on June 30, 2009, and WSR 10-20-160 on October 6, 2010. MPA is currently preparing drafts for the permanent rule to share with providers for their input. Following this, MPA plans to formally adopt the 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 20, Repealed 11.

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 20, Repealed 11.

Date Adopted: April 19, 2011.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-12 issue of the Register.

WSR 11-10-032
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)
[Filed April 27, 2011, 9:43 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating the following optional medical service(s): School-based healthcare services.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-537-0100, 388-537-0200, 388-537-0300, 388-537-0350, 388-537-0400, 388-537-0500, 388-537-0600, 388-537-0700, and 388-537-0800.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding for school-based medical services was eliminated as of January 1, 2011. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. MPA has filed a CR-101 under WSR 10-20-160 to begin the permanent rule making and anticipates filing the CR-102 in May 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 9.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 9.

Date Adopted: April 19, 2011.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-537-0100	School-based healthcare services for children in special education—Purpose.
WAC 388-537-0200	School-based healthcare services for children in special education—Definitions.
WAC 388-537-0300	School-based healthcare services for children in special education—Client eligibility.
WAC 388-537-0350	School-based healthcare services for children in special education—Provider qualifications.
WAC 388-537-0400	School-based healthcare services for children in special education—Covered services.
WAC 388-537-0500	School-based healthcare services for children in special education—Noncovered services.
WAC 388-537-0600	School-based healthcare services for children in special education—School district requirements for billing and payment.
WAC 388-537-0700	School-based healthcare services for children in special education—School district documentation requirements.
WAC 388-537-0800	School-based healthcare services for children in special education—Program monitoring/audits.

WSR 11-10-033
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 27, 2011, 9:48 a.m., effective April 29, 2011]

Effective Date of Rule: April 29, 2011.

Purpose: The department is proposing to amend by emergency adoption WAC 388-432-0005 to reduce diversion cash assistance (DCA) from \$1250.00 to \$1000.00 in a twelve month period through the remainder of fiscal year 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-432-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.57 [74.04.057], and 74.08.090.

Other Authority: HB 3225.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: HB 3225 approved by the legislature during the December 11, 2010, special session modified appropriations for the 2009-11 operating budget. The state general fund appropriations were reduced by \$490.4 million, while the total budgeted amount was reduced by \$336.5 million. The department appropriations included a reduction of \$856,000 GF-S for the remainder of SFY 2011. The 2011 supplemental omnibus operating budget detail associated with HB 3225 includes a reduction to DCA to meet \$856,000 of the department's GF-S reduction in appropriations from the 2011 supplemental omnibus operating budget. This savings is achieved by decreasing DCA from \$1250 to \$1000. It is essential to maintain the continued reduction of the maximum DCA benefit through the remainder of SFY 2011, as this reduction is necessary to achieve a balanced WorkFirst budget for the current fiscal year. The department has filed a CR-101, preproposal statement of inquiry, on April 20, 2011, as WSR 11-09-087 to propose changes in the DCA program.

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

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

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

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

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

Date Adopted: April 21, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-064, filed 11/30/10, effective 12/31/10)

WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? DSHS has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

(1) To get DCA, you must:

(a) Meet all the eligibility rules for temporary assistance for needy families (TANF)/state family assistance (SFA) except:

(i) You do not have to participate in WorkFirst requirements as defined in chapter 388-310 WAC; and

(ii) You do not have to assign child support rights or cooperate with division of child support as defined in chapter 388-422 WAC.

(b) Have a current bona fide or approved need for living expenses;

(c) Provide proof that your need exists; and

(d) Have or expect to get enough income or resources to support yourselves for at least twelve months.

(2) You may get DCA to help pay for one or more of the following needs:

(a) Child care;

(b) Housing;

(c) Transportation;

(d) Expenses to get or keep a job;

(e) Food costs, but not if an adult member of your family has been disqualified for food stamps; or

(f) Medical costs, except when an adult member of your family is not eligible because of failure to provide third party liability (TPL) information as defined in WAC 388-505-0540.

(3) DCA payments are limited to:

(a) One thousand ~~((two hundred fifty))~~ dollars once in a twelve-month period which starts with the month the DCA benefits begin; and

(b) The cost of your need.

(4) We do not budget your income or make you use your resources to lower the amount of DCA payments you can receive.

(5) DCA payments can be paid:

(a) All at once; or

(b) As separate payments over a thirty-day period. The thirty-day period starts with the date of your first DCA payment.

(6) When it is possible, we pay your DCA benefit directly to the service provider.

(7) You are not eligible for DCA if:

(a) Any adult member of your assistance unit got DCA within the last twelve months;

(b) Any adult member of your assistance unit gets TANF/SFA;

(c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit is receiving SSI; or

(d) Your assistance unit does not have a needy adult (such as when you do not receive TANF/SFA payment for yourself but receive it for the children only).

(8) If you apply for DCA after your TANF/SFA grant has been terminated, we consider you an applicant for DCA.

(9) If you apply for TANF/SFA and you received DCA less than twelve months ago:

(a) We set up a DCA loan.

(i) The amount of the loan is one-twelfth of the total DCA benefit times the number of months that are left in the twelve-month period.

(ii) The first month begins with the month DCA benefits began.

(b) We collect the loan only by reducing your grant. We take five percent of your TANF/SFA grant each month.

(10) If you stop getting TANF/SFA before you have repaid the loan, we stop collecting the loan unless you get back on TANF/SFA.

WSR 11-10-034

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed April 27, 2011, 10:23 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating a number [of] optional medical services from program benefits packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental care. Sections in chapter 388-501 WAC are being amended to reflect and support these program cuts.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0050, 388-501-0060, 388-501-0065, 388-501-0070, and 388-502-0160.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive

order, funding for the benefits was eliminated effective January 1, 2011, as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. MPA has filed a CR-101 under WSR 10-22-121 to begin the permanent rule-making process and anticipates filing the CR-102 in June 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: April 19, 2011.

Katherine I. Vasquez
Rules Coordinator

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

WSR 11-10-035
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 27, 2011, 10:48 a.m., effective April 29, 2011]

Effective Date of Rule: April 29, 2011.

Purpose: The department is amending WAC 388-106-0125 to reduce personal care hours in order to implement the Governor's Executive Order 10-04 to reduce current year spending by 6.287 percent. In addition, the governor's proposed 2011 supplemental budget proposes an average ten percent acuity-based reduction in personal care hours. The actual reduction will range between six percent and eighteen percent per client depending on acuity.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0125.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Governor's Executive Order 10-04.

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

state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: State law authorizes and directs the governor to implement across-the-board reductions of allotments of appropriations to avoid a projected cash deficit. Governor's Executive Order 10-04 reduces current year spending by 6.287 percent, and the department is proposing these amendments to stay within the reduction appropriation. In addition, the governor's proposed 2011 supplemental budget proposes an average ten percent acuity-based reduction in personal care hours. An initial public notice was filed on January 18, 2011, as WSR 11-03-081 and the rule language is being sent to internal and external stakeholders for review and comment prior to filing the CR-102. This CR-103E continues emergency rules while the department completes the process for 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 0, Repealed 0.

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

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

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

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

Date Adopted: April 26, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with ((4+6)) 393 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ~~((346))~~ 327 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ~~((277))~~ 260 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ~~((234))~~ 215 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ~~((185))~~ 168 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ~~((138))~~ 120 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ~~((494))~~ 176 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ~~((474))~~ 158 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ~~((432))~~ 115 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ~~((87))~~ 73 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((447))~~ 129 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with ~~((82))~~ 69 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ~~((47))~~ 39 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((447))~~ 129 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ~~((404))~~ 84 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ~~((82))~~ 69 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ~~((47))~~ 39 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with ~~((74))~~ 59 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ~~((56))~~ 47 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ~~((26))~~ 22 base hours if you have an ADL score of 0-4.

WSR 11-10-037

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 27, 2011, 11:32 a.m., effective April 29, 2011]

Effective Date of Rule: April 29, 2011.

Purpose: The department is adding new WAC 388-71-06020 through 388-71-06420. As a result of the 2009-2011 supplemental operating budget (ESSB 6444), the home care quality authority is no longer funded, and the home care referral registry program has moved to the aging and disability services administration's home and community services division effective July 1, 2010.

This filing continues emergency rules filed December 30, 2010, as WSR 11-02-043.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state 2009-2011 supplemental operating budget (ESSB 6444), Governor's Executive Order 10-04.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: These amendments are necessary to address the state's revenue shortfall as outlined in the 2009-2011 supplemental operating budget (ESSB 6444). The home care quality authority is no longer funded, and the home care referral registry moved to the home and community services division effective July 1, 2010. This CR-103E continues emergency rules filed December 30, 2010, as WSR 11-02-043 while the department completes the process for permanent adoption. The CR-102 hearing is scheduled for April 26, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 23, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 0, Repealed 0.

Date Adopted: April 25, 2011.

Katherine I. Vasquez
Rules Coordinator

Referral registry

NEW SECTION

WAC 388-71-06020 What is the purpose of WAC 388-71-06020 through 388-71-06420? The purpose of this chapter is to describe the operation of the home care referral registry.

NEW SECTION

WAC 388-71-06040 What definitions apply to WAC 388-71-06020 through 388-71-06420? The following definitions apply to WAC 388-71-06020 through 388-71-06420:

"AAA" means the local area agency on aging.

"ALJ" means administrative law judge.

"Consumer/employer" means an adult or child with functional or developmental disabilities who qualifies for and uses personal care or respite care paid for through medicaid or state-only funds.

"Consumer representative" means an individual who is acting on behalf of the consumer/employer.

"Department" or DSHS means the department of social and health services.

"Emergency provider" means an individual provider who is employed as a back-up for a provider who did not show up or who was unable to work due to unexpected circumstances.

"Employer" means the consumer.

"HCRR" means the home care referral registry.

"Home care referral registry operations" or "referral registry operations" means the activities carried out at the local level to recruit and register individual providers or prospective individual providers for the referral registry and assist consumers to utilize the referral registry to find qualified individual providers.

"Individual provider" means a person, regardless of relationship, including a personal aide working for a consumer under self-directed care, who has a contract with the department of social and health services to provide personal care or respite care services to adults or children with functional or developmental disabilities and is reimbursed for those services through medicaid or state-only funding.

"IP" means an individual provider.

"Malfeasance" means any unlawful act committed by the provider, whether in the course of employment or otherwise.

"Mandatory reporter" is an employee of DSHS; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian science practitioner; or health care provider subject to chapter 18.130 RCW.

"Misfeasance" means performance of a workplace duty in an improper manner; including events which jeopardize the health and safety of persons, unresolved pattern of performance, issues related to truth or dishonesty, including failure to report a criminal conviction.

"OAH" means the office of administrative hearings.

"Prospective individual provider" means someone who is seeking employment with a consumer/employer.

"Provider" means an individual provider.

"Referral registry" is a data base that is designed to assist consumers with finding individual providers and to assist individual providers to find employment.

"Respite provider" means an individual provider who is employed on a prearranged short-term basis to fill in for a routine caregiver.

"Routine provider" means an individual provider who is employed on a regularly scheduled basis.

NEW SECTION

WAC 388-71-06060 What is the purpose of the referral registry? To increase consumer/employer choice while providing assistance in finding individual providers and prospective individual providers. In addition, the referral registry:

- (1) Takes into account the consumer/employer needs and preferences when identifying potential individual providers;
- (2) Provides for reasonable standards of accountability for providers and prospective individual providers listed on the registry;
- (3) Is voluntary for individual providers and prospective individual providers and consumers/employers;
- (4) Promotes job opportunities for individual providers and prospective individual providers;
- (5) Provides access to the data base for consumer/employers who want to query a referral independently; and
- (6) Increases a consumer/employer's choice of individual providers and prospective individual providers via an established pool of available individual providers and prospective individual providers on the registry.

NEW SECTION

WAC 388-71-06080 Who is eligible to request a referral from the referral registry? The following categories of persons are eligible to request a referral from the referral registry:

- (1) Consumer/employers who are adults or children with functional or developmental disabilities who qualify for and use or will use personal care or respite care paid for through medicaid or state-only funds.
- (2) Persons who are authorized to request a referral on behalf of a consumer including family members, area agency on aging case managers, department social workers and/or a consumer representative.

NEW SECTION

WAC 388-71-06100 What is the difference between an individual provider and a prospective individual pro-

vider? The difference between an individual provider and a prospective individual provider is

(1) An individual provider is someone who has a current individual provider contract with the department.

(2) A prospective individual provider is someone who is seeking employment with a consumer/employer and who does not have a current individual provider contract with the department.

NEW SECTION

WAC 388-71-06120 What qualifies an individual provider or prospective individual provider to be listed on the referral registry? An individual provider or prospective individual provider is qualified to be on the referral registry if he or she:

(1) Prior to January 1, 2012 satisfactorily completes a Washington state patrol background check and has not been convicted of a disqualifying crime or negative action based on the applicable department list of disqualifying crimes and negative actions; and

(2) Has completed an FBI fingerprint based background check if the person has lived in the state of Washington less than three consecutive years immediately before the background check. An individual provider or prospective individual provider who has lived in Washington state less than three consecutive years immediately before the background check may be included on the referral registry for a one hundred twenty-day provisional period as allowed by law or program rules when:

(a) A fingerprint based background check is pending; and

(b) The individual provider or prospective individual provider is not disqualified based on the immediate result of the Washington state patrol background check.

(3) Is not listed on any long-term care abuse and neglect registry used by the department;

(4) Is eighteen years of age or older;

(5) Provides a valid Washington state driver's license or other valid picture identification;

(6) Has a Social Security card or proof of authorization to work in the United States; and

(7) Complies with requirements listed in WAC 388-71-06180 and other applicable requirements in chapter 388-71 WAC.

(8) Effective January 1, 2012, has been screened through the department's fingerprint based background check, as required by RCW 74.39A.055.

NEW SECTION

WAC 388-71-06130 When will an individual provider or prospective individual provider be denied placement on the referral registry? When:

(1) A background check reveals that he or she has been convicted of a disqualifying crime or reveals the existence of a negative action listed on an applicable department list of disqualifying crimes and/or negative actions;

(2) He or she is listed on any state abuse or neglect registry;

(3) He or she is subject to a current and valid protective order that was issued in the state of Washington barring or restricting contact with children, vulnerable adults or persons with disabilities;

(4) The department has denied or revoked his or her individual provider contract; or

(5) He or she is ineligible to be paid as an individual provider pursuant to WAC 388-71-0540.

NEW SECTION

WAC 388-71-06135 When may an individual provider or prospective individual provider be denied placement on the referral registry? An individual provider or prospective individual provider may be denied placement on the referral registry when:

(1) He or she has failed to disclose pending charges, or criminal convictions, or negative actions on a background authorization form;

(2) The department has a reasonable, good faith belief that he or she is unable to meet the care needs of consumers;

(3) A background check reveals that he or she has committed an offense or pattern of offenses, not listed on the applicable list of disqualifying crimes, that the department determines may put consumers at risk; or

(4) He or she is subject to denial of payment as an individual provider pursuant to WAC 388-71-0543.

NEW SECTION

WAC 388-71-06140 How does an individual provider or prospective individual provider apply to be placed on the referral registry? To apply to be placed on the registry an individual provider must:

(1) Contact the local referral registry operations office; and

(2) Request and complete an application packet.

NEW SECTION

WAC 388-71-06160 Does an individual provider or prospective individual provider have any ongoing responsibilities in order to continue to be listed on the referral registry? (1) Yes, he or she must:

(a) Verify their information is accurate and up-to-date whenever contact or availability information changes by contacting the local referral registry operations office or updating directly through the website; and

(b) Successfully complete the criminal history background check process as described in WAC 388-71-06130 and 388-71-0513.

(2) Failure to comply with these ongoing responsibilities will result in placing the individual provider or prospective individual provider in an "inactive" status. The provider will not be referred to a consumer/employer when in "inactive" status. An individual provider or prospective individual provider will be taken off inactive status when he or she meets the requirements of subsections (1) and (2).

NEW SECTION

WAC 388-71-06180 Are there training requirements for being placed on the referral registry? Yes, an individual provider must complete the "Becoming a Professional IP" unless the person has already worked as an individual provider for more than three months. All other mandatory training requirements for long-term care workers set forth in chapter 388-71 WAC are applicable.

NEW SECTION

WAC 388-71-06200 When will an individual provider or prospective individual provider be removed from the referral registry? When he or she:

- (1) Fails to meet the qualifications set forth in WAC 388-71-06120 and 388-71-06180;
- (2) Has committed misfeasance in the performance of his or her duties as an individual provider;
- (3) Has committed malfeasance in the performance of his or her duties as an individual provider;
- (4) Requests that his or her name be removed from the referral registry;
- (5) Has his or her individual provider contract terminated;
- (6) Is subject to being denied placement on the referral registry pursuant to WAC 388-71-06130, exists; or
- (7) Fails to meet qualifications set forth in WAC 388-71-0510 and 388-71-0540.

NEW SECTION

WAC 388-71-06220 What is the procedure for removing an individual provider or prospective individual provider from the referral registry? The department and/or its designee, will review all incidents of which it becomes aware that may warrant removal from the referral registry and:

- (1) For those incidents that fall under the legal jurisdiction of law enforcement, adult protective services (APS) or child protective services (CPS), an immediate referral will be made to the appropriate agency or agencies.
 - (a) The department may initiate an emergency proceeding to inactivate the individual provider or prospective individual provider on the registry pending the investigation.
 - (b) If APS, CPS, and/or law enforcement declines to take action in response to the referral, the matter will proceed to internal review pursuant to subsection (2) of this section.
 - (c) If APS, CPS, and/or law enforcement accepts the matter, then action process per RCW 34.05.479 will be stayed pending APS, CPS, and/or law enforcement action.
- (2) For those incidents not forwarded to APS, CPS, or law enforcement, the department will conduct an internal review. After the internal review is completed, a decision will be made whether or not to remove the individual provider or prospective individual provider from the referral registry. If the decision is to remove the individual provider or prospective individual provider from the referral registry, written notification will be served on the individual provider or prospective individual provider.

(3) An individual provider or prospective individual provider has the right to appeal a decision to remove him or her from the referral registry.

(a) The appeal must be received in writing by the office of administrative hearings (OAH) as designated on the written notice within twenty-eight days of the date the written notice was mailed by the department.

(b) OAH will send the parties a notice containing the hearing date, time and place.

(c) Before the hearing is held:

(i) The department may contact you and try to resolve your dispute; and

(ii) You are encouraged to contact the department and try to resolve your dispute.

(d) An administrative law judge (ALJ) from OAH will act as presiding officer for the adjudicative proceeding.

(e) The ALJ will render an initial decision that will include all matters required by RCW 34.05.461(3). If no party seeks review of the ALJ's initial decision within the time limits set forth in chapter 388-02 WAC, the initial decision will become the final order.

(f) The board of appeals will issue a written order announcing its decision to either adopt, modify, or reverse the initial decision. The board of appeals' order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). The board of appeals' decision is the final order.

(g) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

NEW SECTION

WAC 388-71-06240 By what procedures will the department deny an individual provider or prospective individual provider's application to be placed on the referral registry? Upon receipt of an application to be on the referral registry, the department will utilize the following procedure to determine whether the individual provider or prospective individual provider meets the minimum qualifications, and whether he or she will be able to appropriately meet the care needs of consumers:

(1) An internal review will be conducted and a decision will be made whether to accept or deny the individual provider or prospective individual provider's application to be listed on the referral registry. If the decision is to deny the individual provider or prospective individual provider's application to be listed on the referral registry, written notice will be served on the individual provider or prospective individual provider.

(2) The individual provider or prospective individual provider has the right to appeal a decision to deny his or her application to be listed on the referral registry.

(a) The appeal must be received in writing by the office of administrative hearings (OAH) as designated on the written notice within twenty-eight days of the date the written notice was mailed by DSHS.

(b) OAH will send the parties a notice containing the hearing date, time and place.

(c) Before the hearing is held:

(i) The department may contact you and try to resolve your dispute; and

(ii) You are encouraged to contact the department and try to resolve your dispute.

(d) An administrative law judge from OAH will act as presiding officer for the adjudicative proceeding.

(e) The ALJ will render an initial decision that will include all matters required by RCW 34.05.461(3). If no party seeks review of the ALJ's initial decision within the time limits set forth in chapter 388-02 WAC, the initial decision will become the final order.

(f) The board of appeals will issue a written order announcing its decision to either adopt, modify, or reverse the initial decision. The board of appeals' order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). The board of appeals' decision is the final order.

(g) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

NEW SECTION

WAC 388-71-06260 Who must be notified if a complaint is received about an individual provider? If, in the course of carrying out its duties, the department or its designee, identifies concerns regarding the services being provided by an individual provider, including, but not limited to, when it receives a complaint, the department, or its designee, must notify the appropriate area agency on aging case manager or DSHS social worker regarding such concerns.

NEW SECTION

WAC 388-71-06280 Are referral registry staff considered mandatory reporters? Any department staff, or subcontracted staff working for the referral registry are considered mandatory reporters.

NEW SECTION

WAC 388-71-06300 What is reasonable cause for mandatory reporting? RCW 74.34.035 sets forth reasonable cause for mandatory reporting.

NEW SECTION

WAC 388-71-06340 How does a consumer/employer apply to use the referral registry services? In order to use the referral registry, a consumer/employer or consumer representative must complete the registration process. The registration process conducted by the local referral registry operations office must confirm that the consumer/employer is qualified to receive personal care or respite care paid for through medicaid or state-only funds.

NEW SECTION

WAC 388-71-06360 How does a consumer/employer obtain a list of names from the referral registry? He or she must complete and submit a request application to the local referral registry operations office. The completed application may indicate the days and times an individual provider is needed, the personal care tasks that need to be performed, and any preferences the consumer/employer may have. Upon completion of the application, a registry coordinator will conduct a query that will generate a list of names that best match the consumer/employer's specific criteria. The list will be given to the consumer/employer via mail, phone, fax, or email, depending on the consumer/employer's preference, within a reasonable time.

Upon successful submission of a request application, a consumer/employer or consumer representative may request a user name and password to access the registry independently to generate a list of names.

NEW SECTION

WAC 388-71-06380 Who hires an individual provider or prospective individual provider? It is the consumer/employer or consumer representative's responsibility to interview, screen, hire, supervise, and terminate an individual provider or prospective individual provider.

NEW SECTION

WAC 388-71-06400 Does a consumer/employer who is eligible to have his or her individual provider paid through medicaid or state-only funds from DSHS need to gain approval from his/her case manager, social worker or nurse? Yes, they must receive approval from his/her case manager, social worker or nurse. Pursuant to WAC 388-71-0540 through 388-71-0551, the department or the AAA may deny payment to the client's choice of an individual provider or prospective individual provider when:

- (1) The individual provider or prospective individual does not meet the requirements to contract with DSHS; or
- (2) The case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the consumer/employer needs.

NEW SECTION

WAC 388-71-06420 How can a consumer/employer use the referral registry to get an individual provider in an emergency or as a critical personal care back-up? A consumer/employer must complete an application with the local referral registry operations office. Registry applications can be completed by contacting the local referral registry operations office. Although a consumer/employer must complete the application process, he/she is not required to have previously used the registry prior to requesting a back-up referral.

WSR 11-10-038
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 27, 2011, 2:33 p.m., effective April 27, 2011, 2:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: Under section 6014 of the Deficit Reduction Act of 2005 (DRA), medicaid will not pay for long-term care services for individuals whose equity interest in their home exceeds \$500,000. Effective January 1, 2011, these limits are to be increased each year by the percentage increase in the consumer price index-urban (CPIU). Because 2011 is the first year the excess home equity limits are indexed to the CPIU, those limits will actually increase by 1.1 percent next year, rounded to the nearest \$1,000. Effective January 1, 2011, the excess home equity limits will be \$506,000.

Citation of Existing Rules Affected by this Order:
 Amending WAC 388-513-1350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Other Authority: Deficit Reduction Act of 2005 (DRA).

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

Reasons for this Finding: Federal standard change of the excess home equity provisions effective January 1, 2011, based on the CPIU. This CR-103E continues emergency rules while the department completes the process for permanent adoption. The department is conducting stakeholder work, in addition to awaiting possible changes with the budget and healthcare reform issues.

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

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

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

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

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

Date Adopted: April 27, 2011.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-12-058, filed 5/28/09, effective 7/1/09)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded

resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

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

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

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

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

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

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

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

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

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

(a) The department determines countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits will increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index-urban (CPIU). For

current excess home equity standard starting January 1, 2011 and each year thereafter. see <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

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

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

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

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (2), (5) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

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

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

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

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

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

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

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

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

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

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

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

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

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

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

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

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

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

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

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

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

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

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

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

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

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

(i) The institutionalized spouse; or

(ii) Both spouses.

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

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

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

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

(i) A spousal share equal to one-half of the couple's combined countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-five thousand one hundred four dollars effective July 1, 2007 through June 30, 2009. Effective July 1, 2009 this standard increases to forty-eight thousand six hundred thirty-nine dollars (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long-term

care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

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

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

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

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

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

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsection (7) is required, if:

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

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

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

ings. The council is currently developing language and preparing a cost-benefit analysis for the permanent rule.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-0101.

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

Other Authority: Chapters 19.27 and 34.05 RCW.

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

Reasons for this Finding: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of Section 101.3.2.6 of the 2009 edition of the Washington State Energy Code, revised WAC 51-11-0101, is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the citizens of the state of Washington is based on the following findings:

The Washington State Energy Code 2009 edition ("2009 Energy Code") as adopted by the council pursuant to chapter 34.05 RCW was originally set to become effective on July 1, 2010. A previous emergency rule and permanent rule extended the effective date to January 1, 2011. This rule includes a provision to require duct testing and sealing in existing housing stock when a furnace is replaced. The council was approached by industry representatives who testified that this would provide a hardship to a portion of the population during the current economic climate. The cost for the testing and sealing of ducts on top of the cost of a new furnace could exceed the available budget for those whose furnaces fail this winter. On top of that, a difficult El Nino winter is forecast and could impact the health and safety of those who cannot afford a replacement unit.

The council is currently in the process of considering a permanent rule for this section. Hearings are being held to develop the cost-benefit analysis and the CR-102 will be filed as soon as the analysis is complete. Public hearings will be scheduled for September 2011.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

WSR 11-10-039

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed April 27, 2011, 2:39 p.m., effective April 27, 2011, 2:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: To extend the current emergency rule amending the 2009 Washington State Energy Code, Section 101.3.2.6 regarding duct testing and sealing in existing build-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 8, 2011.

Kristyn Clayton
Council Chair

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

WAC 51-11-0101 Section 101—Scope and general requirements.

101.1 Title: Chapters 1 through 10 of this Code shall be known as the "Washington State Single-Family Residential Energy Code" and may be cited as such; and will be referred to herein as "this Code."

101.2 Purpose and Intent: The purpose of this Code is to provide minimum standards for new or altered buildings and structures or portions thereof to achieve efficient use and conservation of energy.

The purpose of this Code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this Code.

It is intended that these provisions provide flexibility to permit the use of innovative approaches and techniques to achieve efficient use and conservation of energy. These provisions are structured to permit compliance with the intent of this Code by any one of the following three paths of design:

1. A systems analysis approach for the entire building and its energy-using sub-systems which may utilize renewable energy sources, Chapters 4 and 9.
2. A component performance approach for various building elements and mechanical systems and components, Chapters 5 and 9.
3. A prescriptive requirements approach, Chapters 6 and 9.

Compliance with any one of these approaches meets the intent of this Code. This Code is not intended to abridge any safety or health requirements required under any other applicable codes or ordinances.

The provisions of this Code do not consider the efficiency of various energy forms as they are delivered to the building envelope. A determination of delivered energy efficiencies in conjunction with this Code will provide the most efficient use of available energy in new building construction.

101.3 Scope: This Code sets forth minimum requirements for the design of new buildings and structures that provide facilities or shelter for residential occupancies by regulating their exterior envelopes and the selection of their mechanical systems, domestic water systems, electrical distribution and illuminating systems, and equipment for efficient use and conservation of energy.

Buildings shall be designed to comply with the requirements of either Chapter 4, 5, or 6 of this Code and the additional energy efficiency requirements included in Chapter 9 of this Code.

Spaces within the scope of Section R101.2 of the International Residential Code shall comply with Chapters 1 through 10 of this Code. All other spaces, including other Group R Occupancies, shall comply with Chapters 11 through 20 of this Code. Chapter 2 (Definitions), Chapter 7 (Standards), and Chapter 10 (default heat loss coefficients), are applicable to all building types.

101.3.1 Exempt Buildings: Buildings and structures or portions thereof meeting any of the following criteria shall be exempt from the building envelope requirements of Sections 502 and 602, but shall comply with all other requirements for mechanical systems and domestic water systems.

101.3.1.1: Buildings and structures or portions thereof whose peak design rate of energy usage is less than three and four tenths (3.4) Btu/h per square foot or one point zero (1.0) watt per square foot of floor area for space conditioning requirements.

101.3.1.2: Buildings and structures or portions thereof which are neither heated according to the definition of heated space in Chapter 2, nor cooled by a nonrenewable energy source, provided that the nonrenewable energy use for space conditioning complies with requirements of Section 101.3.1.1.

101.3.1.3: Greenhouses isolated from any conditioned space and not intended for occupancy.

101.3.1.4: The provisions of this code do not apply to the construction, alteration, or repair of temporary worker housing except as provided by rule adopted under chapter 70.114A RCW or chapter 37, Laws of 1998 (SB 6168). "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110.

101.3.2 Application to Existing Buildings: Additions, historic buildings, changes of occupancy or use, and alterations or repairs shall comply with the requirements in the subsections below.

EXCEPTION: The building official may approve designs of alterations or repairs which do not fully conform with all of the requirements of this Code where in the opinion of the building official full compliance is physically impossible and/or economically impractical and:

1. The alteration or repair improves the energy efficiency of the building; or
2. The alteration or repair is energy efficient and is necessary for the health, safety, and welfare of the general public.

In no case, shall building envelope requirements or mechanical system requirements be less than those requirements in effect at the time of the initial construction of the building.

101.3.2.1 Additions to Existing Buildings: Additions to existing buildings or structures may be made to such buildings or structures without making the entire building or structure comply, provided that the new additions shall conform to the provisions of this Code.

EXCEPTION: New additions which do not fully comply with the requirements of this Code and which have a floor area which is less than seven hundred fifty square feet shall be approved provided that improvements are made to the existing occupancy to compensate for any deficiencies in the new addition. Compliance shall be demonstrated by either systems analysis or component performance calculations. The nonconforming addition and upgraded, existing occupancy shall have an energy budget or Target UA which is less than or equal to the unimproved existing building (minus any elements which are no longer part of the building envelope once the addition is added), with the addition designed to comply with this Code.

101.3.2.2 Historic Buildings: The building official may modify the specific requirements of this Code for historic buildings and require in lieu thereof alternate requirements which will result in a reasonable degree of energy efficiency. This modification may be allowed for those buildings which have been specifically designated as historically significant by the state or local governing body, or listed in The National Register of Historic Places or which have been determined to be eligible for listing.

101.3.2.3 Change of Occupancy or Use:

Any space not within the scope of Section 101.3 which is converted to space that is within the scope of Section 101.3 shall be brought into full compliance with this Code.

101.3.2.4 Alterations and Repairs: All alterations and repairs to buildings or portions thereof originally constructed subject to the requirements of this Code shall conform to the provisions of this Code without exception. For all other existing buildings, initial tenant alterations shall comply with the new construction requirements of this Code. Other alterations and repairs may be made to existing buildings and moved buildings without making the entire building comply with all of the requirements of this Code for new buildings, provided the requirements of Sections 101.3.2.5 through 101.3.2.8 are met.

101.3.2.5 Building Envelope: The result of the alterations or repairs both:

1. Improves the energy efficiency of the building, and
2. Complies with the overall average thermal transmittance values of the elements of the exterior building envelope in Table 5-1 of Chapter 5 or the nominal R-values and glazing requirements of the reference case in Tables 6-1 and 6-2.

EXCEPTIONS:

1. Untested storm windows may be installed over existing glazing for an assumed U-factor of 0.90, however, where glass and sash are being replaced, glazing shall comply with the appropriate reference case in Tables 6-1 and 6-2.
2. Where the structural elements of the altered portions of roof/ceiling, wall or floor are not being replaced, these elements shall be deemed to comply with this Code if all existing framing cavities which are exposed during construction are filled to the full

depth with batt insulation or insulation having an equivalent nominal R-value. 2x4 framed walls shall be insulated to a minimum of R-15 and 2x6 framed walls shall be insulated to a minimum of R-21. Roof/ceiling assemblies shall maintain the required space for ventilation. Existing walls and floors without framing cavities need not be insulated. Existing roofs shall be insulated to the requirements of this Code if

- a. The roof is uninsulated or insulation is removed to the level of the sheathing, or
- b. All insulation in the roof/ceiling was previously installed exterior to the sheathing or nonexistent.

101.3.2.6 Mechanical Systems: Those parts of systems which are altered or replaced shall comply with Section 503 of this Code. When a space-conditioning system is altered by the installation or replacement of space-conditioning equipment (including replacement of the air handler, outdoor condensing unit of a split system air conditioner or heat pump, cooling or heating coil, or the furnace heat exchanger), the duct system that is connected to the new or replacement space-conditioning equipment shall be ~~((sealed, as confirmed through field verification and diagnostic testing in accordance with procedures for duct sealing of existing duct systems))~~ tested as specified in RS-33. The test results shall ~~((confirm at least one of the following performance requirements:~~

~~1. The measured total duct leakage shall be less than or equal to 8 percent of the conditioned floor area, measured in CFM @ 25 Pascals; or~~

~~2. The measured duct leakage to outside shall be less than 6 percent of the conditioned floor area, measured in CFM @ 25 Pascals; or~~

~~3. The measured duct leakage shall be reduced by more than 50 percent relative to the measured leakage prior to the installation or replacement of the space conditioning equipment and a visual inspection including a smoke test shall demonstrate that all accessible leaks have been sealed; or~~

~~4. If it is not possible to meet the duct requirements of 1, 2 or 3, all accessible leaks shall be sealed and verified through a visual inspection and through a smoke test by a certified third party)) be provided to the building official and the homeowner.~~

EXCEPTIONS:

1. Duct systems that are documented to have been previously sealed as confirmed through field verification and diagnostic testing in accordance with procedures in RS-33.
2. Ducts with less than 40 linear feet in unconditioned spaces.
3. Existing duct systems constructed, insulated or sealed with asbestos.

101.3.2.7 Domestic Water Systems: Those parts of systems which are altered or replaced shall comply with section 504.

101.3.2.8 Lighting: Alterations shall comply with Sections 505 and 1132.3.

101.3.3 Mixed Occupancy: When a building houses more than one occupancy, each portion of the building shall conform to the requirements for the occupancy housed

therein. Where approved by the building official, where minor accessory uses do not occupy more than ten percent of the area of any floor of a building, the major use may be considered the building occupancy.

101.4 Amendments by Local Government: Except as provided in RCW 19.27A.020(7), this Code shall be the maximum and minimum energy code for single-family residential in each town, city and county.

WSR 11-10-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-71—Filed April 28, 2011, 2:36 p.m., effective May 1, 2011]

Effective Date of Rule: May 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-55-160, 220-55-220, 220-55-230, 220-56-240, 220-56-270, and 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the recreational fishing seasons, limits and other regulations. These emergency rules are interim until the permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, 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: April 28, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-55-16000B Free fishing weekend. Notwithstanding the provisions of WAC 220-55-160, during Free Fishing Weekend, anglers may fish with two poles in lakes

where it is legal to do so without purchasing a two-pole endorsement, and may also fish in all open areas of the Columbia River and tributaries without purchasing a Columbia River endorsement. During Free Fishing Weekend, only the license, endorsements, and permit provided for in this section are affected, and all other rules, including the catch record card requirement, remain in effect.

NEW SECTION

WAC 220-55-22000A Two pole endorsement. Notwithstanding the provisions of WAC 220-55-220, it is unlawful for anglers who are in possession of a valid two-pole endorsement to fish with two lines in the following waters:

Swift Reservoir - From dam to markers approximately 3/8 mile below Eagle Cliff Bridge to bridge.

NEW SECTION

WAC 220-55-23000C Columbia River endorsement. Notwithstanding the provisions of WAC 220-55-230, anglers fifteen years of age or older must be in possession of a valid Columbia River endorsement to fish for salmon or steelhead in the following waters:

Mainstem Columbia River from the Rocky Point/Tongue Point line to Chief Joseph Dam

Deep River (Wahkiakum County)

Grays River (Wahkiakum County) mouth to mouth of South Fork

Grays River, West Fork - mouth to hatchery intake foot-bridge

Grays River, East Fork

Skamokawa River (Wahkiakum County) - mouth (Hwy 4 Bridge) to forks below Oatfield and Middle Valley Rd.

Elochoman River (Wahkiakum County) mouth to mouth of West Fork

Mill Creek (Cowlitz/Wahkiakum County)

Abernathy Creek (Cowlitz County) - mouth to Abernathy Falls

Germany Creek (Cowlitz County) - mouth to end of Germany Creek Rd.

Coal Creek (Cowlitz County) - mouth to 400 feet below falls

Cowlitz River (Cowlitz County) - mouth to mouth of Ohanepecosh and Muddy forks

Blue Creek - mouth to Spencer Rd.

Lacamas Creek (Lewis County)

Mill Creek (Lewis County) - mouth to hatchery road crossing culvert

Olequa Creek

Tilton River - mouth to West Fork

Tilton River, East Fork

Tilton River, North Fork

Tilton River, South Fork

Tilton River, West Fork

Mayfield Lake

Lake Scanewa
Cispus River (Lewis County) - mouth to North Fork

Coweeman River (Cowlitz County)

Toutle River (Cowlitz County) - mouth to forks
Toutle River, North Fork
Toutle River, South Fork
Green River (Cowlitz County) - mouth to Miner's Creek

Kalama River (Cowlitz County) - mouth to Kalama Falls
Gobar Creek

Lewis River (Clark/Cowlitz counties) - mouth to mouth of East Fork
Lewis River, North Fork - mouth to Merwin Dam
Lewis River, East Fork
Cedar Creek (Clark County)

Salmon Creek (Clark County) - mouth to 72nd Ave NE

Washougal River (Clark County)

Washougal River West, North Fork
Little Washougal

Camas Slough (Clark County)(waters outside the mouth of the Washougal River, north of Lady Island, and downstream of the Hwy 14 Bridge at the upstream end of Lady Island)

Drano Lake (Skamania County) - (Little White Salmon River downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Hwy 14 Bridge)

Hamilton Creek (Skamania County)

Rock Creek (Skamania County)

Wind River (Skamania County)

White Salmon River (Klickitat/Skamania counties) - mouth to Northwestern (Condit) Dam

Klickitat River (Klickitat County)

Walla Walla River (Walla Walla County) and tributaries.

Mill Creek (Walla Walla County)

Touchet River (Columbia/Walla Walla counties) mouth to confluence of North Fork and South Fork.
Touchet River, North Fork
Touchet River, South Fork
Touchet River, Wolf Fork

Grande Ronde River (Asotin County)

Snake River mainstem
Palouse River (Whitman County) - mouth to the base of Palouse Falls

Tucannon River (Columbia/Garfield counties)

Yakima River (Benton/Yakima/Kittitas counties) - mouth to 400' below Prosser Dam and Sunnyside (Parker) Dam - Roza Dam

Wenatchee River - mouth to Lake Wenatchee (including Lake Jolanda)

Chelan River (Chelan County) mouth (Railroad Bridge) to Chelan PUD safety barrier below the powerhouse

Icicle River (Chelan County) - mouth to Leland Creek

Lake Wenatchee (Chelan County)

Entiat River (Chelan County) - mouth to Entiat Falls

Methow River (Okanogan County) - mouth to Foghorn Dam

Okanogan River (Okanogan County)

Lake Osoyoos (Okanogan County)

Similkameen River (Okanogan County) - mouth to Enloe Dam

NEW SECTION

WAC 220-56-24000G Daily limits forage fish and other food fish not otherwise provided for. Notwithstanding the provisions of WAC 220-56-240, the daily limit for Shiner perch is 15 fish in all Marine waters.

NEW SECTION

WAC 220-56-27000J Smelt—Areas and seasons. (1) Notwithstanding the provisions of WAC 220-56-270, it is unlawful to fish for or possess Columbia River smelt or eulachon (*Thaleichthys pacificus*).

(2) Fishing for smelt other than Columbia River smelt (eulachon) is permitted the entire year on Pacific Ocean beaches and in all rivers concurrent with a salmon or game-fish opening, except closed in the Columbia River and tributaries.

(3) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is open in Puget Sound and the Strait of Juan de Fuca the entire year, except closed weekly from 8:00 a.m. Wednesday to 8:00 a.m. Friday for all types of gear except forage fish jigger gear and closed year-round in Catch Record Card Area 12. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

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

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Capitol Lake (Thurston County); Closed to all fishing.

(2) Columbia River - Closed to fishing for sturgeon from May 1 through July 31, 2011, from the boundary marker on the river bank 400 feet downstream from the Priest Rapids Hatchery outlet channel (Jackson Creek) to Priest Rapids Dam.

WSR 11-10-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-80—Filed April 28, 2011, 3:51 p.m., effective May 1, 2011, 7:00 a.m.]

Effective Date of Rule: May 1, 2011, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-52-05100R; and amending WAC 220-52-051, 220-52-075, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for nonspot shrimp; (2) opens a Region 1 beam trawl area on May 16; (3) reflects changes to the shrimp catch reporting and purchase reporting requirements; and (4) changes the shrimp accounting week. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, 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: April 28, 2011.

Philip Anderson
 Director

NEW SECTION

WAC 220-52-05100S Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot

shrimp species from 7:00 a.m. May 1, 2011, until further notice, except as provided for in this section:

i) In Marine Fish/Shellfish Management and Catch Reporting Area 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 7:00 a.m. June 16, 2011.

ii) All waters of Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

iii) All waters of Shrimp Management Area 1A north of a line projected at 48° 31.5' N latitude are closed.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) It is unlawful to pull shellfish pots in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait will open at 7:00 a.m. May 1, 2011, until further notice.

(c) That portion of Catch Area 22A within SMA 1B will open at 7:00 a.m. May 16, 2011, until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

NEW SECTION

WAC 220-52-07500J Shellfish harvest logs. Notwithstanding the provisions of WAC 220-52-075, effective immediately, until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and email daily catch reports must be submitted to shrimpreport@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360.466.0515. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, Marine Fish-Shellfish Management and Catch Reporting Area, date of harvest, date of sale, and complete fish ticket serial number including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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

NEW SECTION

WAC 220-69-24000V Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: All buyers of shrimp taken by pot gear (including fishers who buy their own catch) are no longer required to report the previous week's purchases by phone or FAX.

(2) Puget Sound shrimp - Trawl gear: All buyers of shrimp taken by trawl gear (including fishers who buy their own catch) must report the previous day's purchases by 10:00 a.m. the following morning. Reports must be made by text message, e-mail or FAX. Text message and e-mail reports must be submitted to shrimpreport@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360.466.0515. Reports must include dealer name, fisher name, pounds sold per shrimp species, Catch Area, date sold, and the complete fish ticket serial number including the first alphanumeric letter. Violation of this subsection is a gross misdemeanor, punishable under [RCW 77.15.560](#).

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. May 1, 2011.

WAC 220-52-05100R Puget Sound shrimp beam trawl fishery—Season. (11-64)

WSR 11-10-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-77—Filed April 29, 2011, 2:27 p.m., effective May 5, 2011, 12:01 a.m.]

Effective Date of Rule: May 5, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900E; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is necessary to ensure a safe and successful kids' fishing day event.

Several thousand trout will be planted two days prior to the event to acclimate them. On May 7, 2011, preregistered kids will be allowed to fish during the event. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 29, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Columbia Park Pond (Benton Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 5, 2011, through 3:00 p.m. May 7, 2011, it is unlawful to fish in Columbia Park Pond, except that registered juveniles participating in the Kids Fish-In event may fish there from 8:00 a.m. to 3:00 p.m. on May 7, 2011.

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. May 7, 2011:

WAC 232-28-61900E Exceptions to statewide rules—Columbia Park Pond.

WSR 11-10-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-76—Filed April 29, 2011, 2:27 p.m., effective May 14, 2011]

Effective Date of Rule: May 14, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900D; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: The spring chinook fishery operates on a Wednesday through Sunday schedule. The standard opening day of May 16, falls on a Monday this year. As a result of discussions with the Hoh Tribe, the starting date was moved to Saturday, May 14, 2011, offering additional fishing 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 29, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Hoh River. Notwithstanding the provisions of WAC 232-28-619, effective May 14 through May 15, 2011 a person may fish for salmon and gamefish in the following waters:

(1) Hoh River - from the mouth to the Olympic National Park boundary below the mouth of the South Fork Hoh.

(2) South Fork Hoh River - from its mouth to the Olympic National Park boundary.

REPEALER

The following section of the Washington Code is repealed effective May 16, 2011:

WAC 232-28-61900D Exceptions to statewide
rules—Hoh River.

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

WSR 11-10-057 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-82—Filed April 29, 2011, 2:27 p.m., effective May 3, 2011, 12:01 a.m.]

Effective Date of Rule: May 3, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

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

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

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

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

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

Date Adopted: April 29, 2011.

Philip Anderson
Director

NEW SECTION

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

1. Effective 12:01 a.m. May 3 through 11:59 a.m. May 8, 2011, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. May 7 through 11:59 a.m. May 8, 2011, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Copalis River and the southern boundary of the Quinault Indian Nation (Grays Harbor

County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 8, 2011:

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

**WSR 11-10-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-81—Filed April 29, 2011, 2:32 p.m., effective April 29, 2011,
2:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Surveys indicate shellfish populations have declined on this beach, in part due to an ongoing construction project. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 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: April 29, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-35000Q Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

Kitsap Memorial State Park: Closed until further notice.

NEW SECTION

WAC 220-56-38000Y Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters for personal use from the following public tidelands except during the open periods specified herein:

Kitsap Memorial State Park: Closed until further notice.

**WSR 11-10-082
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-83—Filed May 3, 2011, 3:27 p.m., effective May 7, 2011]

Effective Date of Rule: May 7, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900F; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Yakama Nation and Washington department of fish and wildlife fishery managers are forecasting a harvestable return of adult hatchery spring chinook to the Yakima River in 2011. There is insufficient time to adopt permanent rules.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 3, 2011.

Philip Anderson
Director

NEW SECTION

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

(1) Effective May 7 through June 15, 2011, a person may fish for salmon in waters of the Yakima River from the Interstate 182 bridge in Richland (river mile 4.5) to 400 feet downstream of Horn Rapids (Wanawish) Dam (river mile 18.0). Daily limit of two hatchery Chinook, minimum size 12 inches in length. Terminal gear is restricted to one, single (point), barbless hook with a hook gap from point to shank of 3/4 inch or less when fishing for salmon. Use of bait is allowed.

(2) Effective May 14 through June 30, 2011, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap (river mile 107.1) to the BNR bridge approximately 500 feet downstream of Roza Dam (river mile 127.8). Daily limit of two hatchery Chinook, minimum size 12 inches in length. Only one, single (point), barbless hook with a hook gap from point to shank of 3/4 inch or less is permitted. During the salmon fishery, the Selective Gear Rules requirement prohibiting use of bait and knotted nets is temporarily suspended for all species, but only in the river section open to salmon fishing. Use of boats equipped with an internal combustion engine is allowed only from the Interstate 82 bridge at Union Gap upstream to the east-bound (upstream) Interstate 82 bridge at Selah Gap. Night closure in effect.

(3) The upper "closed water" boundary line for Area 2 is moved upstream to the railroad bridge downstream of Roza Dam.

(4) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery (except for Free Fishing Weekend, June 11-12), in addition to a freshwater fishing license.

(5) In both areas open to salmon fishing, the use of two (2) fishing poles is permitted during the salmon fishery, provided the participating angler has purchased a "Two-Pole Endorsement" (in addition to the freshwater fishing license and Columbia River Salmon/Steelhead Endorsement).

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2011:

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