WSR 12-08-003
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-42—Filed March 21, 2012, 1:35 p.m., effective March 21, 2012, 1:35 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000L and 220-52-04600S; 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: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair-start provisions. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 21, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600V 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 Quinalt Primary Special Management Area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (46°28.00) and Copalis River (47°08.00) according to the following coordinates:

Northwest Corner (Raft River):	47°28.00 N. Lat.	124°20.70 W. Lon.
Northwest Corner:	47°28.00 N. Lat.	124°34.00 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, 2012. 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, 2012, through 8:00 a.m. June 1, 2012. 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;
- E-mail to Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(7) The Makah Special Management Area (SMA) is opened immediately. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom depth curve according to the following coordinates:

• Northeast Corner (Tatoosh Island)		
• Northwest Corner:	48°19.50 N. Lat.	124°50.45 W. Lon.
• Southwest Corner:	48°02.15 N. Lat.	124°50.45 W. Lon.
• Southeast Corner:	48°02.15 N. Lat.	124°41.00 W. Lon.

(8) It is unlawful for a vessel to use more than 200 pots in the Makah SMA, effective immediately until 8:00 A.M. March 23, 2012. 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;
- E-mail to Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(9) All other provisions of the permanent rule remain 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 spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04000L	Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (12-10)
WAC 220-52-04600S	Coastal crab seasons (12-08)

WSR 12-08-006
EMERGENCY RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-06—Filed March 22, 2012, 11:28 a.m., effective March 22, 2012, 11:28 a.m.]

Effective Date of Rule: Immediately.

Purpose: To bring Washington state's requirements for nongrandfathered health plans into compliance with the Affordable Care Act (ACA) requirements for review of adverse benefit determinations, and to provide that all plans, both grandfathered and nongrandfathered, must continue to address grievances.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-130, 284-43-615, and 284-43-620.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.530.

Other Authority: P.L. 111-148 (2010, as amended) and implement regulations.

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 United States Department of Health and Human Services (HHS) deemed our state to be in compliance with the ACA requirements for review of adverse benefit determinations, based on the adoption of WSR 11-16-061, and the continued maintenance of the emergency rule based on the adoption of WSR 11-23-185, commissioner's docket number R 2011-28. That emergency rule expires on March 22, 2012. The purpose of this emergency rule is to maintain continuity of law so that the HHS determination is not jeopardized. If HHS were to withdraw its determination due to a lapse of these rules, as of January 1, 2012, all appeals of adverse benefit determination would be subject to the federal process, creating confusion for consumers, issuers and independent review organizations. The stability of the individual and small group markets is best served by continuing to be deemed compliant with federal law, and therefore, adoption of these rules on an emergency basis pending adoption of the permanent rules is justified.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 12, 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 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: March 22, 2012.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination and noncertification" means a decision by a health carrier to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits including the admission to or continued stay in a facility.

(2) "Certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, decision rules, medical protocols, or guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services under the auspices of the applicable health plan.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" means an individual covered by a health plan including an enrollee, subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(7) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(8) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(9) "Facility" means an institution providing health care services, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings.

(10) "Formulary" means a listing of drugs used within a health plan.

(11) "Grievance" means a written or an oral complaint submitted by or on behalf of a covered person regarding((:

~~(a) Denial of health care services or payment for health care services; or~~

~~(b)~~)) issues other than health care services or payment for health care services including dissatisfaction with health care services, delays in obtaining health care services, conflicts with carrier staff or providers, and dissatisfaction with carrier practices or actions unrelated to health care services.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(14) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020.

(15) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(16) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(17) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit if the service is consistent with generally recognized standards within a relevant health profession.

(18) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(19) "Mental health services" means in-patient or out-patient treatment, partial hospitalization or out-patient treatment to manage or ameliorate the effects of a mental disorder listed in the *Diagnostic and Statistical Manual (DSM) IV* published by the American Psychiatric Association, excluding diagnoses and treatments for substance abuse, 291.0 through 292.9 and 303.0 through 305.9.

(20) "Network" means the group of participating providers and facilities providing health care services to a particular health plan. A health plan network for carriers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(21) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology,* published by the American Medical Association.

(22) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(23) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(24) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(25) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be

required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(26) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(27) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(28) "Small group" means a health plan issued to a small employer as defined under RCW 48.43.005(24) comprising from one to fifty eligible employees.

(29) "Substitute drug" means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

(30) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

SUBCHAPTER E
ADVERSE BENEFIT DETERMINATION PROCESS REQUIREMENTS FOR NONGRANDFATHERED PLANS

NEW SECTION

WAC 284-43-500 Scope and intent. This subchapter sets forth the requirements that carriers and nongrandfathered health plans must implement when establishing the adverse benefit determination process required by RCW 48.43.530 and 48.43.535. A health plan is nongrandfathered if it does not meet the definition and standards for a grandfathered health plan contained in the Affordable Care Act (2010), P.L. 111-148, as amended, and the Affordable Care Act's implementing federal regulations. These rules apply to any health plan issued, renewed, or in effect on or after January 1, 2012, and any review of an adverse benefit determination initiated after that date.

NEW SECTION

WAC 284-43-505 Definitions. These definitions apply to the sections in subchapter E, WAC 284-43-500 through 284-43-550:

"Adverse benefit determination" has the same meaning as defined in RCW 48.43.005. An adverse benefit determination includes a carrier or health plan's denial of enrollment status.

"Appellant" means an applicant or a person enrolled as an enrollee, subscriber, policy holder, participant, or beneficiary of an individual or group health plan, and when designated, their representative. Providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as the appellant's representative even if the appellant has not formally notified the health plan or carrier of the designation.

"External appeal or review" means the request by an appellant for an independent review organization to determine whether the carrier or health plan's internal appeal decisions are correct.

"Internal appeal or review" means the request by an appellant to a carrier or health plan to review and reconsider an adverse benefit determination.

NEW SECTION

WAC 284-43-510 Review of adverse benefit determinations—Generally. (1) Each carrier and health plan must establish and implement a comprehensive process for the review of adverse benefit determinations. The process must offer an appellant the opportunity for both internal review and external review of an adverse benefit determination. The process must meet accepted national certification standards such as those used by the National Committee for Quality Assurance, except as otherwise required by this chapter.

(2) Neither a carrier nor a health plan may take or threaten to take any punitive action against a provider acting on behalf or in support of an appellant.

(3) Unless the request for review is made by an applicant, coverage must be continued while an adverse benefit determination is reviewed. Appellants must be notified that they may be responsible for the cost of services if the adverse benefit determination is upheld.

(4)(a) A carrier must accept a request for internal review of an adverse benefit determination if it is submitted within at least sixty days of the appellant's receipt of a determination applicable to an individual health plan, and within one hundred eighty days of an appellant's receipt of a determination applicable to a group health plan.

(b) Within seventy-two hours of receiving a request for review, each carrier and health plan must notify the appellant of its receipt of the request.

(5)(a) The right of review and to appeal an adverse benefit determination must be clearly communicated in writing by the carrier. At a minimum, the notice must be sent at the following times:

(i) Upon request;

(ii) As part of the notice of adverse benefit determination;

(iii) To new enrollees at the time of enrollment;

(iv) Annually thereafter to enrollees, group administrators and subcontractors of the carrier; and

(v) The notice requirement under (a)(iii) and (iv) of this subsection is satisfied if the description of the internal and external review process is included in or attached to the summary health plan descriptions, policy, certificate, membership booklet, outline of coverage or other evidence of coverage provided to participants, beneficiaries, or enrollees.

(b) Each carrier and health plan must ensure that its network providers receive a written explanation of the manner in which adverse benefit determinations may be reviewed on both an expedited and nonexpedited basis.

(c) The written explanation of the review process must include information about the availability of Washington's designated ombudsman's office as that term is referenced in the Affordable Care Act (2010) P.L. 111-148, as amended. A carrier and health plan must also specifically direct appellants to the office of the insurance commissioner's consumer protection division for assistance with questions and complaints.

(6) The review process must be accessible to persons who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to request review or participate in the review process.

(a) Carriers and health plans must conform to federal requirements to provide notice of the process in a culturally and linguistically appropriate manner to those seeking review.

(b) Carriers and health plans in counties where ten percent or more of the population is literate in a specific non-English language must include in notices a statement prominently displayed in the relevant language or languages, stating that oral assistance and a written notice in the non-English language are available upon request.

(7) Each carrier and health plan must consistently assist appellants with understanding the review process. Carriers and health plans may not use procedures or practices that the commissioner determines discourages an appellant from seeking expedited internal or independent external review, or concurrent expedited review.

(8) If a carrier or health plan reverses its initial adverse benefit determination, which it may at any time during the review process, the carrier or health plan must provide appellant with written or electronic notification of the decision within two business days of making the decision.

(9) Each carrier and health plan must maintain a log of each review, its resolution, and the dates of receipt, notification and determination.

(a) The carrier must make its review log available to the commissioner upon request in a form accessible by the commissioner. The log must be maintained by the carrier for a six-year period.

(b) Each carrier must identify, evaluate and make available to the commissioner data and reports on trends in reviews for at least a six-year time frame, including the data on the number of appeals, the subject matter of the appeals and their outcome.

NEW SECTION

WAC 284-43-515 Notice and explanation of adverse benefit determination—General requirements. (1) A carrier and health plan must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided to:

(a) An appellant or their authorized representative; and

(b) To the provider if the adverse benefit determination involves the denial of treatment or procedure prescribed by the provider.

(2) A carrier and health plan's notice must include the following information, worded in plain language:

(a) The specific reasons for the adverse benefit determination;

(b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;

(c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;

(d) The time limits applicable to the review; and

(e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a statement that such explanation is available free of charge upon request.

(4) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion is available free of charge upon request.

(5) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered or generated in the course of making the determination, regardless of whether the document, record or information was relied on in making the determination.

(b) Relevant information includes a statement of policy, procedure or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(6) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(7) An enrollee or covered person may request that a carrier and health plan identify the medical, vocational or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination.

(8) The notice must include language substantially similar to the following:

"If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received during the review period.

An external review determination at the next level of review is binding unless other remedies are available under state or federal law. Even if you or the Company decide to pursue other remedies available under state or federal law, (Company name) must provide benefits, including making payment on a claim, if the final external review determination reverses the Company's decision, until there is a judicial decision changing the final determination."

NEW SECTION

WAC 284-43-520 Electronic disclosure and communication by carriers. (1) Except as otherwise provided by applicable law, rule, or regulation, a carrier or health plan furnishing documents through electronic media is deemed to satisfy the notice and disclosure requirements regarding adverse benefit determinations with respect to applicants, covered persons, and appellants or their representative, if the carrier takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents:

(a) Results in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information);

(b) Protects the confidentiality of personal information relating to the individual's accounts and benefits (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by individuals other than the individual for whom the information is intended);

(c) Notice is provided in electronic or nonelectronic form, at the time a document is furnished electronically, that apprises the recipient of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes the internal review process used by your plan) and of the right to request and obtain a paper version of such document; and

(d) Upon request, the appellant or their representative is furnished a paper version of the electronically furnished documents.

(2) Subsection (1) of this section only applies to the following individuals who:

(a) Affirmatively consent, in electronic or nonelectronic form, to receiving documents through electronic media and has not withdrawn such consent.

(b) In the case of documents to be furnished through the internet or other electronic communication network, have affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(c) Prior to providing consent, in electronic or nonelectronic form, received a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the individual's electronic address for receipt of electronically furnished documents or other information;

(iv) Were informed of the right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and

(v) Were provided with any hardware and software requirements for accessing and retaining the documents.

(d) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the individual will be unable to access or retain electronically furnished documents, the carrier must provide a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents, and provide the individual receiving electronic communications with the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent. The carrier or health plan must request and receive a new consent to the receipt of documents through electronic media, following a hardware or software requirement change as described in this subsection.

NEW SECTION

WAC 284-43-525 Internal review of adverse benefit determinations. Each carrier and health plan must include the opportunity for internal review of an adverse benefit determination in its review process. An appellant seeking review of an adverse benefit determination must use the carrier and health plan's review process. Treating providers may seek expedited review on a patient's behalf, regardless of whether the provider is affiliated with the carrier on a contracted basis.

(1) When a carrier and health plan receive a written request for review, the carrier must reconsider the adverse benefit review determination. The carrier and health plan must notify the appellant of the review decision within fourteen days of receipt of the request for review.

(2) For good cause, a carrier and health plan may extend the time to make a review determination by up to sixteen additional days. This thirty-day response time may be waived by the appellant only if an appellant provides informed consent in writing to extend the review period to a specific, agreed-upon date for determination.

(3) The carrier and health plan must provide the appellant with any new or additional evidence, or rationale considered, whether relied upon, generated by, or at the direction of, the carrier or health plan in connection with the claim. The evidence or rationale must be provided free of charge to the appellant and sufficiently in advance of the date the notice of the final internal review decision must be provided. The purpose of this requirement is to ensure the appellant has a reasonable opportunity to respond prior to that date. If the appellant requests an extension in order to respond to any new or additional rationale or evidence, the carrier and health

plan must extend the determination date for a reasonable amount of time.

(4) A carrier and health plan's review process must provide the appellant with the opportunity to submit information, documents, written comments, records, evidence, and testimony, including information and records obtained through a second opinion. An appellant has the right to review the carrier and health plan's file and obtain a free copy of all documents, records and information relevant to any claim that is the subject of the determination being appealed.

(5) A carrier and health plan's internal review process must include the requirement that the carrier and health plan affirmatively review and investigate the determination, and consider all information submitted by the appellant prior to issuing a determination.

(6) Review of adverse determinations must be performed by health care providers or staff who were not involved in the initial decision, and who are not subordinates of the persons involved in the initial decision. If the determination involves, even in part, medical judgment, the reviewer must be or must consult with a health care professional who has appropriate training and experience in the field of medicine encompassing the appellant's condition or disease and make a determination within the clinical standard of care for an appellant's disease or condition.

(7) The internal review process for group health plans must not contain any provision or be administered so that an appellant must file more than two requests for review prior to bringing a civil action. For individual health plans, carriers must provide for only one level of internal review before issuing a final determination, and may not require two levels of internal review.

(8) A carrier or health plan's rescission of coverage is an adverse benefit determination for which review may be requested.

NEW SECTION

WAC 284-43-530 Exhaustion of internal review remedies. (1) If a carrier or health plan fails to strictly adhere to its requirements with respect to the internal review, the internal review process is deemed exhausted, and the appellant may request external review without receiving an internal review determination from the carrier or the health plan.

(2) Exception: A carrier may challenge external review requested under this section either in court, or to the independent review organization to which the external review is assigned.

(a) The challenge must be based on a showing that the carrier violation is de minimis, and did not cause, and is not likely to cause, prejudice or harm to the appellant.

(i) This exception applies only if the external reviewer or court determines that the carrier has demonstrated that the violation was for good cause or was due to matters beyond the control of the carrier, and that the violation occurred in the context of an ongoing, good faith exchange of information between the carrier or health plan and the appellant.

(ii) This exception is not available, and the challenge may not be sustained, if the violation is part of a pattern or practice of violations by the carrier or health plan.

(b) Before filing a request for external review under this section, the appellant may request a written explanation for the violation from the carrier, and the carrier must provide such explanation within ten calendar days. The explanation must include a specific description of the carrier or health plan's basis, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted.

(c) If the independent review organization or a court determines that the internal review process is not exhausted, based on a carrier or health plan's challenge under this section, within a reasonable time, not to exceed ten days, of receiving the independent review organization's determination, or of the entry of the court's final order, the carrier or health plan must provide the appellant with notice that the appellant may resubmit and pursue the internal appeal.

NEW SECTION

WAC 284-43-535 Notice of internal review determination. Each carrier and health plan's review process must require delivery to the appellant of written notification of the internal review determination. In addition to the requirements of WAC 284-43-515, the written determination must include:

(1) The actual reasons for the determination;

(2) Instructions for obtaining further review of the determination, either through a second level of internal review, if applicable, or using the external review process;

(3) The clinical rationale for the decision, which may be in summary form; and

(4) Instructions on obtaining the clinical review criteria used to make the determination.

NEW SECTION

WAC 284-43-540 Expedited review. (1) A carrier and health plan's internal and external review processes must permit an expedited review of an adverse benefit determination at any time in the review process, or concurrently, if:

(a) The appellant is currently receiving or is prescribed treatment for a medical condition related to the adverse benefit determination; and

(b) Any treating provider for the appellant, regardless of their affiliation with the carrier and health plan, believes that a delay in treatment based on the standard review time may seriously jeopardize the appellant's life, overall health or ability to regain maximum function, or would subject the appellant to severe and intolerable pain; or

(c) The determination is related to an issue related to admission, availability of care, continued stay or emergency health care services where the appellant has not been discharged from the emergency room or transport service.

(2) An appellant is not entitled to expedited review if the treatment has already been delivered and the review involves payment for the delivered treatment, if the situation is not urgent, or if the situation does not involve the delivery of services for an existing condition, illness or disease.

(3) An expedited review request may be filed by appellant or the appellant's provider verbally, or in writing.

(4) The carrier or health plan must respond as expeditiously as possible to an expedited review, preferably within twenty-four hours, but in no case longer than seventy-two hours.

(a) The carrier's response to an expedited review may be delivered verbally, and must be reduced to and issued in writing not later than seventy-two hours after the date of the decision. Regardless of who makes the carrier and health plan's determination, the time frame for providing a response to an expedited review request begins when the carrier or health plan first receives the request.

(b) If the carrier or health plan requires additional information to determine whether the service or treatment determination being reviewed is covered under the health plan, or eligible for benefits, they must request such information as soon as possible after receiving the request for expedited review.

(5) If a treating health care provider determines that a delay could jeopardize the covered person's health or ability to regain maximum function, the carrier or health plan must presume the need for expedited review, and treat the review request as such, including the need for an expedited determination of an external review under RCW 48.43.535.

(6) Neither a carrier nor a health plan may require exhaustion of the internal appeal process before an appellant may request an external review in urgent care situations that justify expedited review.

NEW SECTION

WAC 284-43-545 Concurrent expedited review of adverse benefit determinations. A carrier and health plan must offer the right to request concurrent expedited internal and external review of adverse benefit determinations. A carrier and health plan may not extend the timelines when concurrent expedited reviews are requested by making the determinations consecutively. The requisite timelines must be applied concurrently. A carrier and health plan may not deny a request for concurrent review unless the conditions for expedited review in WAC 284-43-540 are not met. Neither a carrier nor a health plan may require exhaustion of internal review if an appellant requests concurrent expedited review.

NEW SECTION

WAC 284-43-550 External review of adverse benefit determinations. When the internal review of an adverse benefit determination is final, or is deemed exhausted, the appellant may request an external review of the final internal adverse benefit determination. If the appellant requests an external review of a final internal adverse determination, the carrier or health plan must cooperatively participate in that review. Carriers and health plans must inform appellants of their right to external review, and explain the process that they must use to exercise that right.

(1) Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit. The carrier and health plan may not establish a minimum dollar amount restriction as a predicate for an appellant to seek external review.

(2) Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner, and must select reviewing IROs in the rotational manner described in the rotational registry system. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(3) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers are available on the insurance commissioner's web site (www.insurance.wa.gov).

(4) In addition to the requirements set forth in RCW 48.43.535, the carrier and health plan must:

(a) Make available to the appellant and to any provider acting on behalf of the appellant all materials provided to an IRO reviewing the carrier's determination;

(b) Provide IRO review without imposing any cost to the appellant or their provider; and

(c) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan.

(d) Within one day of selecting the IRO, notify the appellant the name of the IRO and its contact information. This requirement is intended to comply with the federal standard that appellants receive notice of the IRO's identity and contact information within one day of assignment. The notice from the carrier must explain that the appellant is permitted five business days from receipt of the notice to submit additional information in writing to the IRO. The IRO must consider this information when conducting its review.

(5) A carrier may waive a requirement that internal appeals must be exhausted before an appellant may proceed to an independent review of an adverse determination.

(6) Upon receipt of the information provided by the appellant to the IRO pursuant to RCW 48.43.535 and this section, a carrier may reverse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant.

(7) Carriers must report to the commissioner each assignment made to an IRO not later than one business day after an assignment is made. Information regarding the enrollee's personal health may not be provided with the report.

(8) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.

SUBCHAPTER F
((~~GRIEVANCE AND COMPLAINT~~)) GRANDFATHERED HEALTH PLAN APPEAL PROCEDURES

NEW SECTION

WAC 284-43-605 Application of subchapter F. For any grandfathered health plan, a carrier may continue to use its appeal process as required by RCW 48.43.530 and 48.43.535 by using a process that conforms to the procedures and standards set forth in WAC 284-43-615 through 284-43-630. A health plan is grandfathered if the carrier correctly designates it as such based on the federal definition standards for grandfathered health plans as set forth in the Affordable Care Act (2010), P.L. 111-148, as amended, and its implementing federal regulations.

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-615 ((~~Grievance and complaint~~)) Grandfathered plan appeal procedures—Generally. (1) Each carrier must adopt and implement a comprehensive process for the resolution of covered persons' ((~~grievances and~~)) appeal((~~s~~)) of adverse determinations. This process shall meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(2) This process must conform to the provisions of ((~~this chapter~~)) subchapter F and each carrier must:

(a) Provide a clear explanation of the ((~~grievance~~)) appeal process upon request, upon enrollment to new covered persons, and annually to covered persons and subcontractors of the carrier.

(b) Ensure that the ((~~grievance~~)) appeal process is accessible to enrollees who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file ((~~a grievance.~~

~~(c) Process as a grievance a covered person's expression of dissatisfaction about customer service or the quality or availability of a health service.~~

~~(d)~~)) an appeal.

(c) Implement procedures for registering and responding to oral and written ((~~grievances~~)) appeals in a timely and thorough manner including the notification of a covered person that ((~~a grievance or~~)) an appeal has been received.

(((~~c~~))) (d) Assist the covered person with all ((~~grievance and~~)) appeal processes.

(((~~f~~))) (e) Cooperate with any representative authorized in writing by the covered person.

(((~~g~~))) (f) Consider all information submitted by the covered person or representative.

(((~~h~~))) (g) Investigate and resolve all ((~~grievances and~~)) appeals.

(((~~i~~))) (h) Provide information on the covered person's right to obtain second opinions.

(((~~j~~))) (i) Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals.

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-620 Procedures for review and appeal of adverse determinations. (1) A covered person or the covered person's representative, including the treating provider (regardless of whether the provider is affiliated with the carrier) acting on behalf of the covered person may appeal an adverse determination in writing. The carrier must reconsider the adverse determination and notify the covered person of its decision within fourteen days of receipt of the appeal unless the carrier notifies the covered person that an extension is necessary to complete the appeal; however, the extension cannot delay the decision beyond thirty days of the request for appeal, without the informed, written consent of the ((~~coverage~~)) covered person.

(2) Whenever a health carrier makes an adverse determination and delay would jeopardize the covered person's life or materially jeopardize the covered person's health, the carrier shall expedite and process either a written or an oral appeal and issue a decision no later than seventy-two hours after receipt of the appeal. If the treating health care provider determines that delay could jeopardize the covered person's health or ability to regain maximum function, the carrier shall presume the need for expeditious review, including the need for an expeditious determination in any independent review under WAC 284-43-630.

(3) A carrier may not take or threaten to take any punitive action against a provider acting on behalf or in support of a covered person appealing an adverse determination.

(4) Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the covered person's condition or disease.

(5) All appeals must include a review of all relevant information submitted by the covered person or a provider acting on behalf of the covered person.

(6) The carrier shall issue to affected parties and to any provider acting on behalf of the covered person a written notification of the adverse determination that includes the actual reasons for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination.

SUBCHAPTER G
GRIEVANCES

NEW SECTION

WAC 284-43-705 Definition. This definition applies to subchapter G. "Grievant" means a person filing a grievance as defined in WAC 284-43-130, and who is not an appellant under either subchapter E or F of this chapter.

NEW SECTION

WAC 284-43-715 Grievance process—Generally. This section applies to grandfathered and nongrandfathered plans.

(1) Each carrier and health plan must offer applicants, covered persons, and providers a way to resolve grievances. If the grievance is received verbally, a carrier must promptly provide information regarding the use of its grievance process to an applicant or enrollee who wants to submit a grievance. The carrier must assist the grievant in putting the complaint into writing, if requested to do so.

(2) Each carrier must maintain a log or otherwise register verbal and written grievances, and retain the log or record for six years. It must be available for review by the commissioner upon request. The log must identify the health plan, if any, under which the person was enrolled, the name of the grievant, the resolution of each grievance, the date of receipt, the date of resolution, and if different than the resolution date, the date notice was provided to the person registering the grievance. If a health plan is administered by a third party under contract to the carrier, the third party may keep the log and make it available through the carrier to the commissioner, or the third party may forward the information for the log to the carrier.

(3) Each carrier and health plan must send notice of receipt of a grievance to the grievant within two business days of receiving the grievance.

(4) When resolving a grievance, a carrier must consider all information submitted by the person registering the grievance and perform a reasonable investigation or review of the facts, policies, procedures or practices related to the grievance. A carrier and health plan must determine a resolution in response to the grievance within forty-five business days, and must notify the grievant of the determination within five business days of making it.

(5) Grievance determinations are not adverse benefit determinations and do not establish the right to internal or external review of a carrier or health plan's resolution of the grievance.

(6) Nothing in this section prohibits a carrier from creating or using its own system to categorize the nature of grievances in order to collect data if the system permits reporting of the data specified in subsection (2) of this section.

(7) This section is effective as of March 22, 2012.

WSR 12-08-012
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-43—Filed March 23, 2012, 2:32 p.m., effective March 24, 2012]

Effective Date of Rule: March 24, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900I; 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: Steelhead in excess of hatchery broodstock needs are expected to be available for harvest. Opening Abernathy and Germany creeks provides additional recreational 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: March 23, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Abernathy and Germany creeks. Notwithstanding the provisions of WAC 232-28-619, effective March 24 through April 30, 2012, it is permissible to fish for and retain hatchery steelhead in the following waters:

(1) Abernathy Creek - From the mouth (Hwy. 4 Bridge) to posted markers 500 feet below Abernathy Salmon Hatchery. Closed waters 400 feet downstream to 200 feet upstream of the temporary WDFW adult fish weir near the mouth. Daily limit of two hatchery steelhead. Selective gear rules are in effect.

(2) Germany Creek - From the mouth to the end of Germany Creek Road (approximately 5 miles). Daily limit of two hatchery steelhead. Selective gear rules are in effect.

REPEALER

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

WAC 232-28-61900I	Exceptions to statewide rules—Abernathy and Germany creeks.

WSR 12-08-013
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-44—Filed March 23, 2012, 2:33 p.m., effective March 25, 2012]

Effective Date of Rule: March 25, 2012, one hour after official sunset.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The maximum allowable mortality of natural-origin steelhead due to angling in the affected fisheries has been reached. The Endangered Species Act Section 10 Permit sets the incidental take of listed species separately for each fishery to accommodate variation in the run strength and angling effort within the fisheries and from year to year. The 2011-12 steelhead run is less than in recent years and has a relatively high proportion of natural-origin steelhead. In addition, steady angler effort has increased the number of steelhead encounters and subsequent catch and release mortality. 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: March 23, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules. (1) Notwithstanding the provisions of WAC 232-28-619, effective one hour after official sunset on March 25, 2012, until further notice, special daily limit of two hatchery steelhead, 20-inch minimum size. Mandatory retention in effect. Night closure and selective gear rules are in effect.

(a) **Okanogan River:** Open through March 31, 2012, from the mouth upstream to the Highway 97 Bridge in Oroville. **EXCEPTION:** CLOSED WATERS from the first powerline crossing downstream of the Hwy 155 Bridge in Omak (Coulee Dam Credit Union Building) to the mouth of Omak Creek, and from the Tonasket Bridge (4th Street) downstream to the Tonasket Lagoons Park boat launch.

(b) **Similkameen River:** Open through March 31, 2012, from the mouth upstream to 400 feet below Enloe Dam.

(2) Notwithstanding the provisions of WAC 232-28-619, it is unlawful to fish for whitefish in the following waters:

(a) **Entiat River:** From the mouth (Hwy 97 Bridge) to Entiat Falls.

(b) **Wenatchee River:** From the mouth to the Hwy 2 bridge at Leavenworth.

(c) **Methow River:** From Gold Creek to Foghorn Dam (1 mile upstream of Winthrop).

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 one hour after official sunset on March 25, 2012:

WAC 232-28-61900G	Exceptions to statewide rules. (12-36)

WSR 12-08-022
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-46—Filed March 27, 2012, 9:41 a.m., effective April 21, 2012]

Effective Date of Rule: April 21, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900K; 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 Grays Harbor Poggie Club is sponsoring a kids' fishing derby at Failor Lake one week prior to the opening of the lowland lake season. In previous years, the derby has been held on opening day for the lowland lake season, but congestion and competition from adult anglers interferes with the kids' enjoyment of the derby and the smooth operations of the derby. An emergency rule is needed to open the lake for the derby one week early. There is insufficient time to adopt a permanent rule.

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

Number of Sections Adopted at 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: March 27, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Failor Lake (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, Failor Lake is open to fishing on April 21, 2012, from 8:00 a.m. to noon, for anglers age fourteen years old and younger who are participating in the youth fishing event. Adults may assist children participating in the event, but no child may fish with more than one fishing rod. All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 p.m. on April 21, 2012:

WAC 232-28-61900K	Exceptions to statewide rules—Failor Lake (Grays Harbor Co.)

WSR 12-08-024
EMERGENCY RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner No. R 2012-07—Filed March 28, 2012, 11:19 a.m., effective March 28, 2012, 11:19 a.m.]

Effective Date of Rule: Immediately.

Purpose: Following the adoption of WAC 284-29A-110, the National Association of Insurance Commissioners (NAIC) task force on title insurance statistical reporting, after working with the title insurance industry, adopted a guideline for title insurance agents to report financial data to insurance commissioners. The commissioner is considering amending the current rules, which require title insurance agents to submit data to the insurance company(s), to adopt the NAIC guideline. In an effort to avoid unnecessary administrative filings under the current rules, the commissioner is postponing the current requirement for title insurance agents to submit the data to the title insurance company(s) and postponing the change to the prior approval system in order to implement the NAIC guideline.

Citation of Existing Rules Affected by this Order: Repealing [amending] WAC 284-29A-110 and 284-29A-030.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.005.

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: Without the postponement of WAC 284-29A-110, title insurance agents are required to prepare and submit filings that the commissioner is considering amending. Without an emergency rule, title insurance agents would be required to submit a report to their title insurance company(s) in a manner that is being amended. The implementation of the prior approval rate filing system for an additional year is also being postponed.

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 2, Repealed 1.

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 1.

Date Adopted: March 28, 2012.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2011-07, filed 7/27/11, effective 8/27/11)

WAC 284-29A-030 Transition to prior approval system. (1) On and after January 1, ((~~2013~~)) 2014, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, ((~~2012~~)) 2013, for rates to be effective on January 1, ((~~2013~~)) 2014. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, ((~~2013~~)) 2014.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after January 1, ((~~2013~~)) 2014.

AMENDATORY SECTION (Amending Matter No. R 2009-01, filed 7/20/10, effective 8/20/10)

WAC 284-29A-110 Title insurance agents must report data to title insurers. (1) Each title insurance agent must report premium, policy count, and expense data annually to each title insurer for which it produces business in the state of Washington by April 1st of each year, except as provided in subsection (4) of this section. These data must be reported following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These instructions, called the *Title Insurance Agent Annual Report*, are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

(a) The following premium and policy count data:

(i) Title insurance premiums for all of the agent's business; and

(ii) Title insurance premiums produced for the title insurer to which the report is sent.

(iii) Number of policies issued by all of the title insurers with which the agent does business; and

(iv) Number of policies issued by the title insurer to which the report is sent.

(b) The following expense data related to issuing title insurance policies and commitments for all of the agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance:

(i) Employees' salaries and wages;

(ii) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;

(iii) Employee benefits;

(iv) Rent;

(v) Insurance;

(vi) Legal expense;

(vii) Licenses, taxes, and fees;

(viii) Title plant expense and maintenance;

(ix) Office supplies;

(x) Depreciation;

(xi) Automobile expense;

(xii) Communication expense;

(xiii) Education expense;

(xiv) Bad debts;

(xv) Interest expense;

(xvi) Employee travel and lodging;

(xvii) Loss and loss adjustment expense;

(xviii) Accounting and auditing expense;

(xix) Public relations expense; and

(xx) Other specifically identified expenses.

(c) An explanation that:

(i) Describes how expenses are allocated between the title operations and escrow or other operations of the title insurance agent; and

(ii) Demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.

(d) The estimated average cost to issue a title insurance commitment.

(3) If a title insurer does not receive a report required under this section by April 1st of each year, the title insurer must notify the commissioner by April 15th. This notice must include the name of the agent that did not send the report on time.

(4) For the 2011 calendar year report, each title agent must submit the report to the title insurer(s) on or before April 1, 2013.

WSR 12-08-027

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 12-45—Filed March 28, 2012, 3:26 p.m., effective March 31, 2012, 7:00 p.m.]

Effective Date of Rule: March 31, 2012, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600U; 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: This regulation closes Puget Sound Crab Management Regions 3-1, 3-2 and 3-3 on March 31, 2012, as agreed upon in state/tribal management plans adopted for these regions. This regulation maintains the closure of Puget Sound Crab Management Region 2 East and 2 West because the state commercial crab harvest has reached its quota for this area. 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: March 28, 2012.

Philip Anderson

Director

NEW SECTION

WAC 220-52-04600W Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 7:00 p.m., March 31, 2012, until further notice, it is unlawful to fish for or possess Dungeness crab for commercial purposes in those waters of Puget Sound Crab Management Region 3-1 (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B), Puget Sound Crab Management Region 3-2 (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A and 25E) and Puget Sound Crab Management Region 3-3 (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29).

(2) Effective immediately until further notice, it is unlawful to fish for or possess Dungeness crab for commercial purposes in those waters of Puget Sound Crab Management Region 2 West (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and 26A-W) and Puget Sound Crab Management Region 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East).

(3) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina, and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern-most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(4) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. March 31, 2012:

WAC 220-52-04600U	Puget Sound crab fishery—Seasons and areas. (12-23)

WSR 12-08-031
EMERGENCY RULES
DEPARTMENT OF EARLY LEARNING

[Filed March 29, 2012, 10:16 a.m., effective March 29, 2012, 10:16 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending sections of the department of early learning (DEL) child care licensing chapters 170-151, 170-295, and 170-296 WAC to implement SSB 5504 (chapter 296, Laws of 2011). This bill revises civil penalty (fine) amounts that the department may levy for violation of chapter 43.215 RCW or requirements adopted pursuant to that chapter, and revises required notice and other provisions regarding individuals or entities suspected of providing child care without a license when a license is required under the statute. The rules must be made consistent with the new law.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-095, 170-295-0130, 170-296-0360, 170-296-0420, and 170-296-0430.

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

Other Authority: SSB 5504 (chapter 296, Laws of 2011).

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

Reasons for this Finding: Emergency adoption is needed to prevent potential confusion about the amount of civil penalty DEL may issued [issue] by law for violation of chapter 43.215 RCW or requirements adopted by DEL pursuant to this statute, and notice that DEL must provide when the department suspects an agency (individual or entity) of providing child care without a license. Amending the rules is expected to prevent errors in administrative hearing or judicial proceedings appealing a civil penalty issued by the department, and assure due process.

SSB 5504 amends sections and adopts a new section of chapter 43.215 RCW, Department of early learning, effective July 22, 2011:

- Section 1 of the bill amends RCW 43.215.300 (3)(c), changing the amount of civil monetary penalty (fine) that may be imposed by the department on child care agencies for violation of provisions of chapter 43.215 RCW or requirements adopted by DEL pursuant to this statute.
- Section 2 of the bill amends RCW 43.215.370 by requiring DEL to post on its web site those agencies subject to licensing that have not initiated the licensing process within thirty days of the department's notification as required in RCW 43.215.300.
- Section 3 creates a new section of chapter 43.215 RCW specifying the content of the notice that DEL must provide when the department suspects an individual or entity of providing child care services without a license, including that DEL may impose a civil fine and the amount of fine per day that viola-

tions occur, and actions that DEL may take to inform the public about the suspected unlicensed care if the individual or entity does not cease providing child care without a license.

The provision of unlicensed child care is a significant public health, safety and welfare concern. The legislature defines in chapter 43.215 RCW the various types of child care that must be licensed. Without licensing oversight, unlicensed child care operators may:

- Be caring for children without adequate health or safety monitoring;
- Not have had their facilities inspected for fire safety and emergency evacuation of children, particularly infants and children who cannot walk;
- Be caring for more children than would be safe, even if licensed;
- Not be providing adequate early learning activities;
- Not have adequate child care or child development training; and/or
- Not have had background checks on individuals who have access to the children.

The legislature established DEL in part to "safeguard and promote the health, safety and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care …" RCW 43.215.005 (4)(c). These rules are needed to provide the tools for the department to address suspected unlicensed child care, as well as to protect the safety, health and well being of children who may be in unlicensed child care.

The department has filed a preproposal statement of inquiry, WSR 11-12-076, and is proceeding with permanent rule adoption. This filing supersedes and replaces rules filed as WSR 11-24-025.

Proceeding with these rules is consistent with state office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are, "required by federal or state law or required to maintain federally delegated or authorized programs," and "necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

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

Date Adopted: March 29, 2012.

Elizabeth M. Hyde
Director

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

WAC 170-151-095 May the department assess civil penalties on unlicensed programs? (1) If the department receives information that a school-age program is operating without a license, the department will investigate. ((~~The department may contact the program, send a letter, or make an on-site visit to determine that the agency is operating without a license. Where the department has determined that an agency is operating without a license, the department must send written notification to the unlicensed program by certified mail or other means showing proof of service. This notification must contain the following:~~

~~(1) Notice to the agency of the basis for the department's determination that the agency is providing child care without a license and the need for the department to license the agency;~~

~~(2) The citation of the applicable law;~~

~~(3) The assessment of seventy-five dollars per day penalty for each day the agency provides unlicensed care. The department makes the fine effective and payable within thirty days of the agency's receipt of the notification;~~

~~(4) How to contact the department;~~

~~(5) The unlicensed agency's need to submit an application to the department within thirty days of receipt of the department's notification;~~

~~(6) That the department may forgive the penalty if the agency submits an application within thirty days of the notification; and~~

~~(7) The unlicensed agency's right to an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.~~)) (2) If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

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

WAC 170-295-0130 When can ((I)) an individual be fined for operating an unlicensed program? (1) If ((we)) the department receives information that ((you are)) an individual is operating a child care center without a license, ((we)) the department investigates the allegation.

(2) ((We contact you, send you a letter, or make an on-site visit to your center to determine whether you are operating without a license.

(3) If we determine that you personally or on behalf of another person are operating a child care center without a license, we send written notification by certified mail or other method showing proof of service to the owner of the unlicensed center. This notification must contain the following:

(a) Notice to the center owner of our basis for determination that the owner is providing child care without a license and the need for us to license the center;

(b) Citation of the applicable law;

(c) The fine is effective and payable within thirty days of the agency's receipt of the notification;

(d) Information about how to contact the department;

(e) The requirement that the unlicensed center owner submit an application for a license to the department within thirty days of receipt of our notification;

(f) That we can forgive the fine if the center submits an application within thirty days of the notification; and

(g) The unlicensed center owner's right to an adjudicative proceeding (fair hearing) as a result of the assessment of a monetary fine and how to request an adjudicative proceeding.)) If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

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

WAC 170-296-0360 What happens if ((I)) an individual fails to follow the rules? (1) If ((you)) an individual fails to follow the rules, ((we notify you)) the department notifies the individual of the violation in writing and unless the health, safety or welfare of children in care is threatened, ((we)) the department provides ((you)) the individual with an opportunity to come into compliance before ((we)) the department takes adverse licensing action. The notice provides:

(a) A description of the violation and rule that was broken;

(b) A statement of what is required to comply with the rules;

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

(d) The maximum financial penalty (civil fine) that ((you)) the individual must pay if ((you do)) the individual does not comply with the rules by the required date.

(2) ((We)) The department may fine ((you seventy-five)) an individual one hundred fifty dollars a day for each violation of the licensing rules.

(3) ((We)) The department may assess and collect the ((penalty)) civil fine with interest for each day ((you)) an individual fails to follow the rules.

(4) ((We)) The department may impose a civil ((penalty)) fine in addition to other adverse actions against ((your)) an individual's license including probation, suspension and revocation.

(5) ((We)) The department may, but ((are)) is not required to, withdraw the fine if ((you)) the individual comes into compliance during the notification period.

(6) If ((we assess)) the department assesses a civil ((penalty you have)) fine, the individual has the right to an adjudicative proceeding (hearing) as governed by RCW 43.215.305 and chapter 170-03 WAC.

(7) If ((~~you do~~)) the individual does not request ((~~an adjudicative proceeding you~~)) a hearing he or she must pay the civil fine within twenty-eight days after ((~~you receive~~)) receiving the notice.

AMENDATORY SECTION (Amending WSR06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0420 Does the department assess a civil ((~~penalty~~)) fine if ((~~I~~)) an individual provides unlicensed child care? ((~~We~~)) The department may fine ((~~you seventy-five~~)) an individual one hundred fifty dollars per day for each day ((~~you~~)) the individual provides unlicensed child care.

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

WAC 170-296-0430 What will happen if the department believes ((~~I am~~)) an individual is providing unlicensed child care? ((~~We send written notice to you if we think you are providing unlicensed child care. The notice explains:~~

~~(1) Why we think you are providing unlicensed child care;~~

~~(2) The law that prohibits unlicensed child care;~~

~~(3) That you must stop providing child care until you get a license;~~

~~(4) How to contact the department;~~

~~(5) How to apply for a license;~~

~~(6) That the fine may be lifted if you apply for a license;~~

~~(7) Your right to an adjudicated proceeding if we assess a monetary penalty; and~~

~~(8) How you can ask for an adjudicative proceeding.~~)) (1) If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a civil fine of one hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(2) The department's written notice in subsection (1) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a civil fine is assessed; and

(e) How to ask for a hearing.

(3) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (1)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

WSR 12-08-032
RESCISSION OF EMERGENCY RULES
DEPARTMENT OF EARLY LEARNING
[Filed March 29, 2012, 11:13 a.m.]

Effective immediately upon this filing, the department of early learning (DEL) rescinds emergency rules filed on December 1, 2011, as WSR 11-24-025. DEL is extending adoption of amended chapters 170-151, 170-295, and 170-296 WAC to implement SSB 5504 regarding civil fines and unlicensed child care. The department has filed subsequent emergency rules on this date to replace and supersede the rules filed as WSR 11-24-025.

Elizabeth M. Hyde
Director

WSR 12-08-035
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed March 29, 2012, 2:07 p.m., effective April 1, 2012]

Effective Date of Rule: April 1, 2012.

Purpose: Combining medically needy (MN) and categorically needy (CN) home and community based (HCB) waivers per approval by Centers for Medicare and Medicaid Services (CMS) under Waiver WA.0049.06.04, WA[.]004.01.03, WA.0049.06.04 effective April 1, 2012. 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 were increased each year by the percentage increase in the consumer price index urban (CPIU). Effective January 1, 2011, the excess home equity limits was $506,000. The standard utility allowance (SUA) reference has changed effective October 1, 2011, this emergency adoption corrects the reference. Eliminating reference to general assistance and/or disability lifeline and referencing to the correct aged, blind or disabled (ABD) cash program or medical care services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1305, 388-513-1315, 388-513-1350, 388-513-1380, 388-515-1505, 388-515-1506, 388-

515-1507, 388-515-1508, 388-515-1509, 388-515-1512, 388-515-1514, 388-515-1540, and 388-515-1550.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Other Authority: Deficit Reduction Act (DRA) of 2005.

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

Reasons for this Finding: See Purpose statement above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 13, 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 13, Repealed 0.

Date Adopted: March 27, 2012.

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 12-09 issue of the Register.

WSR 12-08-038
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-47—Filed March 30, 2012, 8:44 a.m., effective April 7, 2012, 12:01 a.m.]

Effective Date of Rule: April 7, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

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

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

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

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

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

Date Adopted: March 30, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000E 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. April 7 through 11:59 a.m. April 9, 2012, razor clam digging is allowed in Razor Clam Area 1. Digging is only allowed from 12:01 a.m. to 11:59 a.m. each day.

2. Effective 12:01 a.m. April 7 through 11:59 a.m. April 9, 2012, razor clam digging is allowed in Razor Clam Area 2. Digging is only allowed from 12:01 a.m. to 11:59 a.m. each day.

3. Effective 12:01 a.m. April 7 through 11:59 a.m. April 7, 2012, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the Copalis River (Grays Harbor County). Digging is only allowed from 12:01 a.m. to 11:59 a.m.

4. Effective 12:01 a.m. April 7 through 11:59 a.m. April 8, 2012, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Copalis River (Grays Harbor County) and the southern boundary of the Quinault Indian Nation Reservation (Grays Harbor County). Digging is only allowed from 12:01 a.m. to 11:59 a.m. each day.

5. Effective 12:01 a.m. April 7 through 11:59 a.m. April 9, 2012, razor clam digging is allowed in that portion of Razor Clam Area 3 between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is only allowed from 12:01 a.m. to 11:59 a.m. each day.

6. 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 9, 2012:

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

WSR 12-08-050
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-49—Filed April 2, 2012, 4:20 p.m., effective April 3, 2012, 7:00 a.m.]

Effective Date of Rule: April 3, 2012, 7:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000K; 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: Sets the first 2012 mainstem commercial salmon season. Based on preseason forecasts for ESA-listed salmonids, impacts associated with the season are expected to remain within allowable limits. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Winter and spring select area commercial seasons remain in place. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 26 and April 2, 2012. 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 2, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River

a) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

b) **Dates:** 7:00 AM to 7:00 PM Tuesday, April 3, 2012.

c) **Allowable Sales:** Adipose fin-clipped Chinook salmon, shad and white sturgeon (43-54 inch fork length). A maximum of 6 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

d) **Sanctuaries:** Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers, as applicable.

e) **Gear:** Drift nets only. 4 1/4" maximum mesh size restriction. Net length not to exceed 150 fathoms. Net length can increase from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers.

The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle-net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks required under miscellaneous regulations. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by 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.

f) Miscellaneous Regulations:

Soak times, defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

Red corks are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Lighted Buoys: 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

Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is a least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

Observer program: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

Live Capture workshop: Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live-capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live-capture certification.

24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

2. 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 PM to 7 AM Thursday night April 19, Tuesday night April 24, and each Monday and Thursday night from April 26, 2012, until further notice.

c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets 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 longer than three-fourths the width of the stream (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 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. 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

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 WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

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

3. 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:** Monday and Thursday nights from April 26, 2012, until further notice. Open hours are 7:00 PM to 7:00 AM

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. 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.

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:** During April 26 through May 11, 2012, 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 at the MERTS dock. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 14, fishers are required to call 971-230-8247 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.

4. Blind Slough/Knappa Slough Select Area

a) **Area:** Blind Slough and Knappa Slough areas are open. From April 30 through June 15, 2012, 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:** Thursday night April 19, Tuesday night April 24, and Monday and Thursday nights from April 26, 2012 until further notice. Open hours are 7:00 PM to 7:00 AM

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 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.

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.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. April 3, 2012:

WAC 220-33-01000K	Columbia River seasons below Bonneville. (12-15)

WSR 12-08-051
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-48—Filed April 2, 2012, 4:24 p.m., effective April 12, 2012, 12:01 a.m.]

Effective Date of Rule: April 12, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L; 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 regulation is necessary to ensure a safe and successful fishing kids event. Trout will be stocked two days prior to the event to acclimate them. Closing the pond prior to the event will ensure there are fish for participants to catch. On the day of the event, preregistered kids will be allowed to fish in these netted areas. The reason for keeping the pond closed after the event is to ensure the safety of the public as well as the event participants while the event is shutting down and equipment and nets are being removed. 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 2, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Klineline Pond (Clark Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. on April 12, 2012, through 11:59 p.m. on April 14, 2012, it is unlawful to fish in those waters of Klineline Pond, except as provided in this section:

(a) Open to fishing 11:00 a.m. to 2:00 p.m. on April 13, 2012, in the netted area, by participants in the Special Needs Kids Fishing Event.

(b) Open to fishing 8:00 a.m. to 3:00 p.m. on April 14, 2012, in the netted area, by juvenile anglers participating in the Klineline Kids Fishing Event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 15, 2012:

WAC 232-28-61900L	Exceptions to statewide rules—Klineline Pond (Clark Co.)

WSR 12-08-067
EMERGENCY RULES
LIQUOR CONTROL BOARD

[Filed April 4, 2012, 11:04 a.m., effective April 8, 2012]

Effective Date of Rule: April 8, 2012.

Purpose: New rules are needed to implement Initiative 1183 that passed on November 8, 2011. Parts of the initiative became effective on December 8, 2011. New license types were created and the state of Washington changed from a controlled liquor system to a privatized liquor system. Emergency rules filed December 7, 2011, expire April 8, 2012. A CR-102 for permanent rules was filed on March 14, 2012. Rules are needed [to] implement the new laws and to clarify the language in the new laws created in Initiative 1183 until the permanent rules are adopted.

Citation of Existing Rules Affected by this Order: Amending WAC 314-28-010, 314-28-050, 314-28-060, 314-28-070, 314-28-080, and 314-28-090.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, 66.24.640.

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: Initiative 1183 passed on November 8, 2011. Sections of the initiative become effective December 8, 2011. The emergency rules filled [filed] on December 7, 2011, expire April 8, 2012. The emergency rules are needed [to] implement the new laws and to clarify the initiative for liquor licensees and citizens in the state.

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 15, Amended 6, 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 15, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 15, Amended 6, 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 4, 2012.

Sharon Foster
Chairman

NEW SECTION

WAC 314-02-103 What is a wine retailer reseller endorsement? (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license to allow the sale of wine at retail to on-premises liquor licensees.

(2) No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) A grocery store licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(4) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(5) The annual fee for the wine retailer reseller endorsement is one hundred sixty-six dollars.

NEW SECTION

WAC 314-02-104 Central warehousing. (1) Each retail liquor licensee having a warehouse facility where they intend to receive wine and/or spirits must register their warehouse facility with the board and include the following information:

(a) Documentation that shows the licensee has a right to the warehouse property;

(b) If a warehouse facility is to be shared by more than one licensee, each licensee must demonstrate to the board that a recordkeeping system is utilized that will account for all wine and/or spirits entering and leaving the warehouse for each license holder. The system must also account for product loss;

(c) Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee; and

(d) Alternatively, if the warehouse does not have a recordkeeping system that provides the required information, wine and/or spirits for each licensee in a shared warehouse must be separated by a physical barrier. Where physical separation is utilized, a sketch of the interior of the warehouse facility must be submitted indicating the designated area the licensee will be storing product. (Example: If ABC Grocery and My Grocery, each licensed to a different ownership entity, both lease space in a warehouse facility, the wine and/or spirits must be in separate areas separated by a physical barrier.)

(2) Upon the request of the board, the licensee must provide any of the required records for review. Retail liquor licensees must keep the following records for three years:

(a) Purchase invoices and supporting documents for wine and/or spirits purchased;

(b) Invoices showing incoming and outgoing wine and/or spirits (product transfers);

(c) Documentation of the recordkeeping system in a shared warehouse as referenced in subsection (1)(b) of this section; and

(d) A copy of records for liquor stored in the shared warehouse.

(3) Each licensee must allow the board access to the warehouse for audit and review of records.

(4) If the wine and/or spirits for each licensee in a shared warehouse is not kept separate, and a violation is found, each licensee that has registered the warehouse with the board may be held accountable for the violation.

NEW SECTION

WAC 314-02-106 What is a spirits retailer license? (1) A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license. The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The annual fee for a spirits retail license is one hundred sixty-six dollars.

NEW SECTION

WAC 314-02-107 What are the requirements for a spirits retail license? (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

(i) Inventory management;

(ii) Employee training and supervision; and

(iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.

NEW SECTION

WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license? (1) A **spirits retailer** must submit quarterly reports and payments to the board.

The required reports must be:

(a) On a form furnished by the board;

(b) Filed every quarter, including quarters with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 20th). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** If a spirits retailer licensee does not submit its quarterly reports and payment to the board as required in subsection (1) of this section, the licensee is subject to penalties.

A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day quarterly report is due. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

Chapter 314-23 WAC

SPIRITS DISTRIBUTORS, SPIRITS CERTIFICATE OF APPROVAL LICENSES, AND SPIRITS IMPORTERS

NEW SECTION

WAC 314-23-001 What does a spirits distributor license allow? (1) A spirits distributor licensee may not commence sales until March 1, 2012. A spirits distributor licensee is allowed to:

(a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;

(b) Sell spirits to any liquor licensee allowed to sell spirits;

(c) Sell spirits to other spirits distributors; and

(d) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

NEW SECTION

WAC 314-23-005 What are the fees for a spirits distributor license? (1) The holder of a spirits distributor license must pay to the board a monthly license fee as follows:

(a) Ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure; and

(b) Five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(c) The license fee is only calculated on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from a spirits certificate of approval holder.

(d) Reporting of sales and payment must be submitted on forms provided by the board.

(2) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars.

NEW SECTION

WAC 314-23-020 What are the requirements for a spirits distributor license? In addition to any application requirements in chapter 314-07 WAC, applicants applying for a spirits distributor license must submit:

(1) A copy of all permits required by the federal government;

(2) Documentation showing the applicant has the right to the property;

(3) An acknowledgment form certifying the applicant has a security plan which addresses:

(a) Inventory management; and

(b) Physical security of spirits product with respect to preventing theft.

NEW SECTION

WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license? (1) A **spirits distributor** must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

NEW SECTION

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late? (1) If a spirits distributor licensee does not submit its monthly reports and payment to the board as required in WAC 314-23-021(1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

NEW SECTION

WAC 314-23-030 What does a spirits certificate of approval license allow? (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to distributors or importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(3) A certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(4) An authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain an authorized representative certificate of approval license which allows the holder to ship spirits to spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(5) An authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States may ship spirits to licensed spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

NEW SECTION

WAC 314-23-040 What are the requirements for a certificate of approval license? The following documents are required to obtain a certificate of approval license:

(1) Copies of all permits required by the federal government;

(2) Copies of all state licenses and permits required by the state in which your operation is located; and

(3) Licensing documents as determined by the board.

NEW SECTION

WAC 314-23-041 What are the monthly reporting and payment requirements for a spirits certificate of approval licensee? (1) A spirits certificate of approval licensee must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the

month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

NEW SECTION

WAC 314-23-042 What if a certificate of approval licensee fails to report or pay, or reports or pays late? (1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

NEW SECTION

WAC 314-23-050 What does a spirits importer license allow? (1) A spirits importer license is issued to an in-state spirits importer. A spirits importer is allowed to:

(a) Import spirits into the state of Washington;

(b) Store spirits in the state of Washington;

(c) Sell spirits to spirits distributors; and

(d) Export spirits in original containers.

(2) An out-of-state spirits importer is required to obtain an authorized representative certificate of approval license as referenced in WAC 314-23-030.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-010 Records. (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers must:

(a) ((~~Must~~)) Keep records ((~~concerning~~)) regarding any spirits, whether produced or purchased, for three years after each sale. A distiller ((~~may be~~)) is required to report on forms approved by the board;

(b) ((~~Must,~~)) In the case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; ((~~and~~))

(c) ((~~Must~~)) Submit duplicate copies of transcripts, notices, or other data that ((~~are~~)) is required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request;

(d) Preserve all sales records to spirits retail licensees, sales to spirits distributors, and exports from the state; and

(e) Submit copies of its monthly records to the board upon request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records((~~, in the case~~)) of retail sales to consumers; and

(b) Submit ((~~duplicate copies of~~)) its monthly ((~~returns~~)) records to the board upon request.

NEW SECTION

WAC 314-28-030 Changes to the distiller and craft distiller license. (1) Beginning March 1, 2012, all distilleries licensed under RCW 66.24.140 and 66.24.145 may sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington.

(2) Beginning June 1, 2012, a distiller may sell spirits of its own production to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present at the licensed premises.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

(a) Produce sixty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) ((~~Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special ordered by an individual Washington state liquor store~~)) For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits distributor;

(d) For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits retailer in the state of Washington;

((~~(d)~~)) (e) Sell to out-of-state entities;

((~~(e)~~)) (f) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040;

((~~(f)~~)) (g) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

((~~(g)~~)) (h) Contract ((~~produced~~)) produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors until March 1, 2012.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-060 What are the general requirements for a craft distillery license? Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

(1) Submit copies of all permits required by the federal government;

(2) Submit other licensing documents as determined by the board;

(3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington((;

~~(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;~~

~~(5) Purchase any spirits used for sampling at the distillery premises from the board; and~~

~~(6) Purchase any spirits used for samples provided to retailers from the board~~)).

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license? (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

(a) On a form furnished by the board ((~~or in a format approved by the board~~));

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(3) ((~~Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge.~~)) On sales on or after March 1, 2012, a distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first two years of licensure and five percent of their gross spirits revenues to the board in year three and thereafter.

(a) ((~~Any on-premises sale or sample provided to a customer is considered a sale reportable to the board.~~)) On sales after June 1, 2012, a distillery or craft distillery must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

(b) ((~~Samples provided to retailers are considered sales reportable to the board.~~

~~(c)~~)) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? If a distillery or craft distiller ((~~fails to~~)) does not submit its monthly reports ((~~or~~)) and payment to the board((~~, or submits late, then~~)) as required in WAC 314-28-070(1), the licensee is subject to penalties ((~~and surety bonds~~)).

(((~~(1)~~))) Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

(~~(2) Surety bonds. A "surety bond" is a type of insurance policy that guarantees payment to the state, and is executed by a surety company authorized to do business in the state of Washington. Surety bond requirements are as follows:~~

~~(a) Must be on a surety bond form and in an amount acceptable to the board;~~

~~(b) Payable to the "Washington state liquor control board"; and~~

~~(c) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.28.040 and by all applicable WACs.~~

~~(3) The board may require a craft distillery to obtain a surety bond or assignment of savings account, within twenty-one days after a notification by mail, if any of the following occur:~~

~~(a) A report or payment is missing more than thirty days past the required filing date, for two or more consecutive months;~~

~~(b) A report or payment is missing more than thirty days past the required filing date, for two or more times within a two-year period; or~~

~~(c) Return of payment for nonsufficient funds.~~

~~(4) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.~~

~~(5) The amount of a surety bond or savings account required by this chapter must be either three thousand dollars, or the total of the highest four months' worth of liability for the previous twelve month period, whichever is greater. The licensee must maintain the bond for at least two years.~~

~~(6) Surety bond and savings account amounts may be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee will be required to increase the bond amount or amount on deposit within twenty-one days.~~

~~(7) If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue payments from the surety company or assigned account. If the exact amount of payment due is not known because of missing reports, the board will estimate the payment due based on previous production, receipts, and/or sales.~~))

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-090 Distilleries or craft distilleries((—Selling in-state, retail pricing and product listing))—Selling out-of-state((—Special orders)). (((1) ~~**What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?**~~

~~(a) There are two ways to sell a spirits product at a state liquor store:~~

~~(i) Through the special order process; and~~

~~(ii) Through product listing.~~

~~(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.~~

~~(c) Before a craft distillery licensee may sell its product to a customer (twenty-one years old or older) at its distillery premises, a licensee must;~~

~~(i) Obtain a retail price from the board;~~

~~(ii) Sell its product to the board; and~~

~~(iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.~~

~~(d) *Listing a product*. A craft distillery licensee must submit a formal request to the board to have the board regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.~~

~~(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.~~

~~(ii) The purchasing division shall apply the same consideration to all listing requests.~~

~~(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see chapter 314-74 WAC).~~

~~(e) *Obtaining a retail price*. A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.~~

~~(i) Pricing may not be changed within a calendar month.~~

~~(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.~~

~~(2)~~)) **What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?**

(((~~(a)~~))) (1) A distillery or craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

(((~~(b)~~))) (2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's sixty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

(((~~(c)~~))) (3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

(((~~(d) Product sold out-of-state is not subject to retail pricing by the board.~~

~~(e)~~))) (4) A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.