

WSR 05-19-044
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 15, 2005, 10:09 a.m., effective September 16, 2005]

Effective Date of Rule: September 16, 2005.

Purpose: The Division of Developmental Disabilities has received initial approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replaced the community alternatives program (CAP) waiver.

These rules will clarify eligibility, service array, utilization, provider qualifications, client appeal rights and access to services. This filing includes new chapter 388-845 WAC.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: The initial approval of the HCBS waivers by CMS required the department to implement new rules by April 1, 2004, to protect the health and welfare of eligible clients by ensuring no interruption in services to former participants in the CAP waiver, and to ensure a continuation of federal matching funds under 42 C.F.R. 441, Subpart G—Home and Community Based Services—Waiver Requirements. Emergency rules were originally filed as WSR 04-08-020, and were extended as WSR 04-16-019, 04-20-018, 05-04-020, and 05-12-026. The department has filed a notice of intent to adopt permanent rules as WSR 03-20-103. These rules are necessary to extend the emergency rules filed as WSR 05-12-026 while the proposed rules are adopted on a permanent basis. The proposed rule making was filed as WSR 05-17-055 on August 9, 2005, and the hearing is scheduled for October 11, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 131, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.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 131, Amended 0, Repealed 0.

Date Adopted: September 9, 2005.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

Chapter 388-845 WAC

**DDD HOME AND COMMUNITY BASED SERVICES
 WAIVERS**

NEW SECTION

WAC 388-845-0001 Definitions.

"ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate Services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CAP waiver" means the Community Alternatives Program waiver.

"CARE" means the Comprehensive Assessment and Reporting Evaluation.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

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

"Employment/Day Program Services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"HCBS Waivers" means home and community based services waivers.

"ICF/MR" means an Intermediate Care Facility for the Mentally Retarded.

"Plan of Care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs.

"Providers" means an individual or agency who is licensed, certified and/or contracted to provide services to you.

"Respite Assessment" means a series of questions about you and your caregiver used to determine the amount of respite care available to you.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means State Supplementary Payment, a benefit administered by the department intended to augment an individual's SSI.

"State Funded Services" means services that are funded entirely with state dollars.

NEW SECTION

WAC 388-845-0005 What are home and community based services (HCBS) waivers? (1) Home and community based services (HCBS) waivers are services approved by the Centers For Medicare and Medicaid Services (CMS) under section 1915(c) of the Social Security Act as an alternative to

intermediate care facility for the mentally retarded (ICF/MR) care.

(2) Certain federal regulations are "waived" enabling the provision of services in the home and community to individuals who would otherwise require the services provided in an ICF/MR as defined in chapters 388-835 and 388-837 WAC.

NEW SECTION

WAC 388-845-0010 What is the purpose of HCBS waivers? The purpose of HCBS waivers is to provide services in the community to individuals with ICF/MR level of need to prevent their placement in an ICF/MR.

NEW SECTION

WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)? DDD has replaced its community alternatives program (CAP) waiver with four HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) CORE waiver; and
- (4) Community Protection waiver.

NEW SECTION

WAC 388-845-0020 When were these four HCBS waivers effective? The four DDD HCBS waivers were effective April 1, 2004.

NEW SECTION

WAC 388-845-0025 Does this change in waivers affect the waiver services I am currently receiving? Your services will not be disrupted with this transfer to new waivers.

NEW SECTION

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070 through 388-845-0090.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/MR facility.
- (6) You have a need for waiver services as identified in your plan of care.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

NEW SECTION

WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria? If you are not currently on a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

NEW SECTION

WAC 388-845-0040 Is there a limit to the number of people who can be on each HCBS waiver? Each waiver has a limit on the number of people who can be served in a waiver year. In addition, DDD has the authority to limit access to the waivers based on availability of funding for new waiver participants.

NEW SECTION

WAC 388-845-0041 What is DDD's responsibility to provide my services under the waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your plan of care, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and WAC 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

NEW SECTION

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be added? When there is capacity on a waiver and available funding for new waiver participants, DDD may add people to a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and safety needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060(9).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home.

NEW SECTION

WAC 388-845-0050 How do I request to be enrolled in a waiver? You can contact DDD and request to be enrolled in a waiver at any time.

(1) Your request for waiver enrollment will be documented by DDD in a statewide database if DDD determines that you:

(a) Meet the criteria for a priority population in WAC 388-845-0045; and

(b) Have ICF/MR level of care needs per WAC 388-845-0070 through 388-845-0090.

(2) When there is capacity available to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be added.

NEW SECTION

WAC 388-845-0051 How will I be notified of the decision by DDD to enroll me in a waiver? DDD will notify you in writing of its decision to enroll you in a waiver.

NEW SECTION

WAC 388-845-0055 How do I remain eligible for the waiver? If you are already on a HCBS waiver, you must continue to meet eligibility criteria.

(1) DDD completes a reassessment at least every twelve months to determine if you continue to meet all of the eligibility requirements in WAC 388-845-0030.

(2) You must receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b).

(3) Your plan of care, CARE assessment/reassessment and respite assessment/reassessment must be done in person.

NEW SECTION

WAC 388-845-0060 Can my waiver eligibility be terminated? DDD may terminate your waiver eligibility if DDD determines that your health and safety needs cannot be met in your current waiver or for one of the following reasons:

(1) You no longer meet one of the requirements listed in WAC 388-845-0030;

(2) You no longer need waiver services;

(3) You do not use a waiver service at least once in every thirty consecutive days;

(4) You are on the Community Protection waiver and choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(5) You choose to disenroll from the waiver;

(6) You reside out of state;

(7) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(8) You refuse to participate with DDD in:

(a) Service planning;

(b) Required quality assurance and program monitoring activities; or

(c) Accepting services agreed to in your plan of care as necessary to meet your health and safety needs.

(9) You are residing in a hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

(a) At the end of the twelfth month following the effective date of your current plan of care, as described in WAC 388-845-3060; or

(b) On March 31st, the end of the waiver fiscal year, whichever date occurs first.

(10) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

(11) Your needs exceed what can be provided under the CORE or Community Protection waiver as specified in WAC 388-845-3085.

NEW SECTION

WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver? If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including Medicaid eligibility.

(2) Your eligibility for nonwaiver DDD services is based upon availability of funding and program eligibility for a particular service.

NEW SECTION

WAC 388-845-0070 What determines if I need ICF/MR level of care? DDD determines if you need ICF/MR level of care based on your need for waiver services. To reach this decision, DDD uses its department-approved assessment and/or other information specified in WAC 388-845-0085.

NEW SECTION

WAC 388-845-0075 How is a child age twelve or younger assessed for ICF/MR level of care? If you are age twelve or younger, DDD assesses you for ICF/MR level of care using the "child's assessment of ICF/MR level of care—current support needs" form. You must have support needs exceeding what is expected of others of the same age.

NEW SECTION

WAC 388-845-0080 What score indicates ICF/MR level of care if I am age twelve or younger? (1) If you are age five or younger you need major or moderate support in five of nine tasks.

(2) If you are age six through twelve, you need major or moderate support in seven of nine of the tasks in (3) below.

(3) The form indicates certain tasks that require major support and which require moderate or major support.

(a) Major support for:

- (i) Dressing and grooming self;
- (ii) Toileting self.
- (b) Major or moderate support for:
 - (i) Eating;
 - (ii) Mobility;
 - (iii) Communication;
 - (iv) Making choices and taking responsibility;
 - (v) Exploring one's environment;
 - (vi) Supports needed to meet therapy and health needs;

or

(vii) Family/caregiver support required to maintain the child at home.

NEW SECTION

WAC 388-845-0085 If I am age twelve or younger, what if my score on the current needs assessment does not indicate ICF/MR level of care? For children age twelve or younger:

(1) If you do not have a qualifying score for determining ICF/MR level of care using the department approved assessment, you may provide DDD other current information that provides evidence of your need for waiver services.

(2) This additional information may include occupational therapy (OT), physical therapy (PT), psychological, nursing, social work, speech and hearing, or other professional evaluations that reflect current needs.

NEW SECTION

WAC 388-845-0090 How is a person age thirteen or older assessed for ICF/MR level of care? If you are age thirteen or older, DDD assesses you for ICF/MR level of care using the "assessment of ICF/MR level of care—current support needs" form.

NEW SECTION

WAC 388-845-0095 What score indicates ICF/MR level of care if I am age thirteen or older? If you are age thirteen or older, you must have a qualifying score of at least forty in responses to twenty questions assessing your residential, school or employment, and social support needs.

NEW SECTION

WAC 388-845-0096 If I am age thirteen or older, what if my score on the current needs assessment does not indicate the need for ICF/MR level of care? If you are age thirteen or older and your current needs assessment does not indicate the need for ICF/MR level of care, you are not eligible for an HCBS waiver.

NEW SECTION

WAC 388-845-0100 What determines which waiver I am assigned to? DDD will assign you to a waiver based on the following criteria:

(1) If you were on the CAP waiver as of March 2004, your initial assignment to the Basic, Basic Plus, CORE, or Community Protection waiver was based on:

- (a) Services you received from DDD in October 2002 through September 2003; and
- (b) Services you were authorized to receive in October, November and December 2003.
- (2) If you are new to a waiver since April 1, 2004, assignment is based on your assessment and service plan.
- (3) Additional criteria apply to the assignment to the Community Protection waiver.

NEW SECTION

WAC 388-845-0105 What criteria determine assignment to the Community Protection waiver? DDD may assign you to the Community Protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent crimes.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Plan of care (POC);

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDD approved certified individuals and agencies.

NEW SECTION

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care.

(2) Mental health stabilization services may be added to your plan of care after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services or employment/day program services.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your assessed needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

NEW SECTION

WAC 388-845-0115 Does my waiver eligibility limit my access to DDD nonwaiver services? If you are enrolled in a DDD HCBS waiver:

(1) You are not eligible for state-only funding for DDD services; and

(2) You are not eligible for Medicaid personal care.

NEW SECTION

WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?

Your participation in the new waivers does not affect your continued receipt of State Supplemental Payment from DDD.

NEW SECTION

WAC 388-845-0200 What waiver services are available to me?

Each of the four HCBS waivers has a different scope of service and your service plan defines the waiver services available to you.

NEW SECTION

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1425 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$6500 per year
	Sexual Deviancy Evaluation	Limits are determined by DDD
	Respite care	Limits are determined respite assessment
	Personal care	Limits are determined by CARE assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD
	Emergency assistance is only for services contained in the Basic waiver	\$6000 per year; Preauthorization required

NEW SECTION

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6070 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$9500 per year
	Adult foster care (adult family home) Adult residential care (boarding home)	Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE assessment
	Respite care	Limits are determined by respite assessment
	Sexual Deviancy Evaluation	Limits are determined by DDD
	Emergency assistance in only for services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

NEW SECTION

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations Occupational therapy Respite care Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation	

CORE WAIVER	SERVICES	YEARLY LIMIT
	Community access Person-to-person Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limited by CARE assessment

NEW SECTION

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation Person-to-person Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

WAIVER SERVICES DEFINITIONS

NEW SECTION

WAC 388-845-0300 What are adult family home (AFH) services? Per RCW 70.128.010 an adult family home (AFH) is a regular family abode in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the service. Adult family homes (AFH) may provide residential care to adults in the Basic Plus waiver.

NEW SECTION

WAC 388-845-0305 Who is a qualified provider of AFH services? The provider of AFH services must be licensed and contracted with ADSA as an AFH who has suc-

cessfully completed the DDD specialty training provided by the department.

NEW SECTION

WAC 388-845-0310 Are there limits to the AFH services I can receive? Adult family homes services are limited by the following:

(1) AFH services are defined and limited per chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).

(2) Rates are determined by and limited to department published rates for the level of care generated by CARE.

(3) AFH reimbursement cannot be supplemented by other department funding.

NEW SECTION

WAC 388-845-0400 What are adult residential care (ARC) services? Adult residential care (ARC) facilities may provide residential care to adults. This service is available in the Basic Plus waiver.

(1) An ARC is a licensed boarding home for seven or more unrelated adults.

(2) Services include, but are not limited to, individual and group activities; assistance with arranging transportation; assistance with obtaining and maintaining functional aids and equipment; housework; laundry; self-administration of medications and treatments; therapeutic diets; cuing and providing physical assistance with bathing, eating, dressing, locomotion and toileting; stand-by one person assistance for transferring.

NEW SECTION

WAC 388-845-0405 Who is a qualified provider of ARC services? The provider of ARC services must:

- (1) Be a licensed boarding home;
- (2) Be contracted with ADSA to provide ARC services; and
- (3) Have completed the required and approved DDD specialty training.

NEW SECTION

WAC 388-845-0410 Are there limits to the ARC services I can receive? ARC services are limited by the following:

- (1) ARC services are defined and limited by boarding home licensure and rules in chapter 388-78A WAC, and chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).
- (2) Rates are determined and limited to department published rates for the level of care generated by CARE.
- (3) ARC reimbursement cannot be supplemented by other department funding.

NEW SECTION

WAC 388-845-0500 What is behavior management and consultation? (1) Behavior management and consultation may be provided to persons on any of the four HCBS waivers and include the development and implementation of programs designed to support waiver participants using:

- (a) Strategies for effectively relating to caregivers and other people in the waiver participant's life; and
- (b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling).

(2) Behavior management and consultation may also be provided as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-0505 Who is a qualified provider of behavior management and consultation? The provider of behavior management and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Registered counselor; or
- (11) Polygrapher.

NEW SECTION

WAC 388-845-0510 Are there limits to the behavior management and consultation I can receive? The following limits apply to your receipt of behavior management and consultation:

- (1) DDD and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.
- (2) The dollar limitations for aggregate services in your Basic and Basic Plus waiver limit the amount of service unless provided as a mental health stabilization service.
- (3) DDD reserves the right to require a second opinion from a department-selected provider.
- (4) Behavior management and consultation not provided as a mental health stabilization service requires prior approval by DDD.

NEW SECTION

WAC 388-845-0600 What is community access? Community access is a service provided in the community to enhance or maintain the person's competence, integration, physical or mental skills.

- (1) If you are age sixty-two or older, this service is available to assist you to participate in activities, events and organizations in the community in ways similar to others of retirement age.
- (2) This service is available to adults in the Basic, Basic Plus, and CORE waiver.

NEW SECTION

WAC 388-845-0605 Who is a qualified provider of community access? The provider of community access must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

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

- (1) You must be age sixty-two or older.
- (2) You cannot be authorized to receive community access services if you receive pre-vocational services or supported employment services.
- (3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-0700 What is a community guide service? Community guide service increases access to informal community supports. Services are short-term and designed to develop creative, flexible and supportive community resources for individuals with developmental disabilities. This service is available in Basic, Basic Plus and CORE waivers.

NEW SECTION

WAC 388-845-0705 Who is a qualified community guide? Any individual or agency contracted with DDD as a "community guide" is qualified to provide this service.

NEW SECTION

WAC 388-845-0710 Are there limitations to the community guide services I can receive? (1) You may not receive community guide services if you are receiving residential habilitation services because your residential provider can meet this need.

- (2) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-0750 What are community transition services? (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for an individual to establish his or her basic living arrangement) associated with moving from an institutional setting to a community setting and receiving services from a DDD certified residential habilitation services provider.

- (2) Community transition services include:
 - (a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;
 - (b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;
 - (c) Moving expenses required to occupy and use a community domicile;
 - (d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

- (e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

- (3) Community transition services are available in the CORE and Community Protection waivers.

NEW SECTION

WAC 388-845-0755 Who are qualified providers of community transition services? (1) Providers of community transition services for individuals in the CORE waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1505.

- (2) Providers of community transition services for individuals in the Community Protection waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1510.

NEW SECTION

WAC 388-845-0760 Are there limitations to community transition services I can receive? (1) Community transition services do not include:

- (a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD or DVD players; and
- (b) Computers whose use is primarily diversional or recreational.

- (2) Community transition services are available only to individuals that are moving from an institution to a community setting and are enrolled in either the CORE or Community Protection waiver.

NEW SECTION

WAC 388-845-0800 What is emergency assistance? Emergency assistance is a temporary increase to the yearly dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

NEW SECTION

WAC 388-845-0805 Who is a qualified provider of emergency assistance? The provider of the service you need to meet your emergency must meet the provider qualifications for that service.

NEW SECTION

WAC 388-845-0810 How do I qualify for emergency assistance? You qualify for emergency assistance only if you have used all of your waiver funding and your current situation meets one of the following criteria:

- (1) You involuntarily lose your present residence for any reason either temporary or permanent;
- (2) You lose your present caregiver for any reason, including death;
- (3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

NEW SECTION

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

- (1) Prior authorization is required based on a reassessment of your plan of care to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care (POC);
- (3) Emergency services are limited to the scope of services in your waiver;
- (4) Emergency Assistance may be used for interim services until:
 - (a) The emergency situation has been resolved; or
 - (b) You are transferred to alternative supports that meet your assessed needs; or
 - (c) You are transferred to an alternate waiver that provides the service you need.

NEW SECTION

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care needed to:

- (a) Ensure the health, welfare and safety of the individual; or
- (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

NEW SECTION

WAC 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations? The provider making these environmental accessibility adaptations must be a registered contractor per chapter 18.27 RCW and contracted with DDD.

NEW SECTION

WAC 388-845-0910 What limitations apply to environmental accessibility adaptations? The following service limitations apply to environmental accessibility adaptations:

- (1) Prior approval by DDD is required.
- (2) Environmental accessibility adaptations or improvements to the home are excluded if they are of general utility

without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(3) Environmental accessibility adaptations cannot add to the total square footage of the home.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1000 What are extended state plan services? Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under Medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state Medicaid plan. These services are available under all four HCBS waivers.

NEW SECTION

WAC 388-845-1010 Who is a qualified provider of extended state plan services? Providers of extended state plan services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

NEW SECTION

WAC 388-845-1015 Are there limits to the extended state plan services I can receive? (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under Medicaid and any other private health insurance plan;

(2) The department does not pay for treatment determined by DSHS to be experimental;

(3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department reserves the right to require a second opinion from a department-selected provider.

(b) The department will require evidence that you have accessed your full benefits through Medicaid and private insurance before authorizing this waiver service.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1100 What are mental health crisis diversion bed services? Mental health crisis diversion bed services are temporary residential and behavioral services that may be provided in a client's home or licensed or certified setting. These services are available to eligible clients who are at risk of serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization. These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160

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

NEW SECTION

WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services? Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per Chapter 388-101 WAC; or
- (2) Other department licensed or certified agencies.

NEW SECTION

WAC 388-845-1110 What are the limits of mental health crisis diversion bed services? (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

NEW SECTION

WAC 388-845-1150 What are mental health stabilization services? Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in all four waivers to adults determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) Skilled nursing services;
- (3) Specialized psychiatric services; or
- (4) Mental health crisis diversion bed services.

NEW SECTION

WAC 388-845-1155 Who are qualified providers of mental health stabilization services? Providers of these mental health stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

NEW SECTION

WAC 388-845-1160 Are there limitations to the mental health stabilization services that I can receive? (1) Mental health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) The costs of mental health stabilization services do not count toward the dollar limitations for aggregate services in the Basic and Basic Plus waiver.

(3) Mental health stabilization services require prior approval by DDD or its designee.

NEW SECTION

WAC 388-845-1200 What is a "person-to-person" service? "Person-to-person" is a day program service intended to assist participants to progress toward employment goals through individualized planning, skill instruction, information and referral, and one to one relationship building. This service may be provided in addition to community access, prevocational services, or supported employment. This service is available to adults in all four HCBS waivers.

NEW SECTION

WAC 388-845-1205 Who is a qualified provider of person-to-person services? The provider of "person-to-person" services must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

WAC 388-845-1210 Are there limits to the person-to-person service I can receive? (1) You must be age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

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

NEW SECTION

WAC 388-845-1300 What are personal care services? Personal care services are the provision of assistance with personal care tasks as defined in WAC 388-106-0010, personal care services. These services are available in the Basic, Basic Plus, and CORE waivers.

NEW SECTION

WAC 388-845-1305 Who are the qualified providers of personal care services? (1) Qualified providers of personal care services may be individuals or licensed homecare agencies contracted with DDD.

(2) All individual providers and homecare agency providers must meet provider qualifications for in-home caregivers in WAC 388-71-0500 through 388-71-0556.

(3) Providers of personal care services for adults must comply with the training requirements in these rules governing Medicaid personal care providers in WAC 388-71-05670 through 388-71-05799.

(4) Natural, step, or adoptive parents can be the personal care provider of their adult child age eighteen or older.

NEW SECTION

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for Medicaid personal care in chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid

personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE) or children's comprehensive assessment.

(2) The maximum hours of personal care you may receive are determined by the approved department assessment for Medicaid personal care services.

(a) Provider rates are limited to the department established hourly rates for in-home Medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with DDD.

NEW SECTION

WAC 388-845-1400 What are prevocational services? Prevocational services prepare an adult for paid or unpaid employment through the teaching of such concepts as compliance, attendance, task completion, problem solving and safety. These services are available in all four HCBS waivers.

NEW SECTION

WAC 388-845-1405 Who are the qualified providers of prevocational services? Providers of prevocational services must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

WAC 388-845-1410 Are there limits to the prevocational services I can receive? The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty-one and graduated from high school or age twenty-two or older.

(2) You are not expected to be competitively employed within one year (excluding supported employment programs).

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

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

NEW SECTION

WAC 388-845-1500 What are residential habilitation services? Residential habilitation services (RHS) are available in the CORE and Community Protection waivers.

(1) Residential habilitation services include assistance:

(a) With personal care and supervision; and

(b) To learn, improve or retain social and adaptive skills necessary for living in the community.

(2) Residential habilitation services may provide instruction and support addressing one or more of the following outcomes:

(a) Health and safety;

(b) Personal power and choice;

(c) Competence and self-reliance;

(d) Positive recognition by self and others;

(e) Positive relationships; and

(f) Integration into the physical and social life of the community.

NEW SECTION

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the CORE waiver?

Providers of residential habilitation services for participants in the CORE waiver must be one of the following:

(1) Individuals contracted with DDD to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDD to provide training as an "alternative living provider";

(3) Agencies contracted with DDD and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, group training homes, foster homes, child placing agencies, staffed residential homes or adult residential rehabilitation centers per WAC 246-325-0012.

NEW SECTION

WAC 388-845-1510 Who are qualified providers of residential habilitation services for the Community Protection waiver?

Providers of residential habilitation services for participants of the Community Protection waiver are limited to state-operated living alternatives (SOLA) and supported living providers who are contracted with DDD and certified under chapter 388-101 WAC as a residential community protection provider-intensive supported living services (CP-ISLS).

NEW SECTION

WAC 388-845-1515 Are there limits to the residential habilitation services I can receive? (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the CORE or Community Protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

NEW SECTION

WAC 388-845-1600 What is respite care? Respite care is intended to provide short-term intermittent relief for persons normally providing care for waiver individuals. This service is available in the Basic, Basic Plus, and CORE waivers.

NEW SECTION

WAC 388-845-1605 Who is eligible to receive respite care? The person providing your care is eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

- (1) You live in a private home with an unpaid caregiver;
or
- (2) You live with a paid caregiver who is:
- A natural, step or adoptive parent;
 - A contracted companion home provider; or
 - A licensed children's foster home provider.

NEW SECTION

WAC 388-845-1606 Can DDD approve an exception to the requirements in WAC 388-845-1605? DDD may approve an exception to WAC 388-845-1605 above only through June 30, 2006 if all of the following conditions exist:

- Your live-in caregiver is a relative as defined in WAC 388-825-345(2);
- You were living with this caregiver in January 2005;
- Your relative caregiver was receiving payment from the department as your caregiver in January 2005; and
- You were enrolled in the Basic, Basic Plus, or CORE Waiver in January 2005.

NEW SECTION

WAC 388-845-1610 Where can respite care be provided? Respite care can be provided in the following location(s):

- Individual's home or place of residence;
- Relative's home;
- Licensed children's foster home;
- Licensed, contracted and DDD certified group home;
- State operated living alternative (SOLA) and other DDD certified supported living settings;
- Licensed boarding home contracted as an adult residential center;
- Adult residential rehabilitation center;
- Licensed and contracted adult family home;
- Children's licensed group home, licensed staffed residential home, or licensed childcare center;
- Other community settings such as camp, senior center, or adult day care center.

NEW SECTION

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

- Individuals meeting the provider qualifications under chapter 388-825 WAC;
- Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- Licensed and contracted adult family home;
- Licensed and contracted adult residential care facility;
- Licensed and contracted adult residential rehabilitation center under WAC 246-325-012;
- Licensed childcare center under chapter 388-295 WAC;
- Licensed child daycare center under chapter 388-295 WAC;
- Adult daycare centers contracted with DDD;
- Certified provider per chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or
- Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs, adult day care.

NEW SECTION

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

- If you are in the Basic or Basic Plus waiver, a respite care assessment will determine how much respite you can receive per WAC 388-845-3005 through WAC 388-845-3050.
- If you are in the CORE waiver, the plan of care (POC), not the respite assessment, will determine the amount of respite care you can receive.
- Prior approval by DDD is required to exceed fourteen days per month.
- Respite cannot replace:
 - Daycare while a parent or guardian is at work; and/or
 - Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.
- Respite providers have the following limitations and requirements:
 - If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;
 - The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and
 - If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.
- Your caregiver cannot provide paid respite services for you or other persons during your respite care hours.
- If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nurs-

ing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210. The dollar limit governing aggregate services does not apply to skilled nursing services provided as part of mental health stabilization services per WAC 388-845-1100(2).

NEW SECTION

WAC 388-845-1650 What are sexual deviation evaluations? Sexual deviation evaluations are professional evaluations of sexual deviancy to determine the need for psychological, medical or therapeutic services. Sexual deviancy evaluations are available in all four waivers.

NEW SECTION

WAC 388-845-1655 Who is a qualified provider of sexual deviation evaluations? The provider of sexual deviancy evaluations must:

- (1) Be a certified sexual offender treatment provider (SOTP); and
- (2) Meet the standards contained in WAC 246-930-030 (education required prior to examination) and WAC 246-930-040 (professional experience required prior to examination).

NEW SECTION

WAC 388-845-1660 Are there limitations to the sexual deviation evaluations I can receive? (1) The evaluations must meet the standards contained in WAC 246-930-320.

(2) The costs of sexual deviation evaluations do not count toward the dollar limits for aggregate services in the Basic or Basic Plus waivers.

NEW SECTION

WAC 388-845-1700 What is skilled nursing? (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, CORE, and Community Protection waivers.

(2) Services include nurse delegation services provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

(3) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-1705 Who is a qualified provider of skilled nursing services? The provider of skilled nursing services must be a licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the Nurse Practice Act chapter 246-845 WAC and contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

- (1) Skilled nursing services require prior approval by DDD.
- (2) The department and the treating professional determine the need for and amount of service.
- (3) The department reserves the right to require a second opinion by a department-selected provider.
- (4) Skilled nursing services provided as a mental health stabilization service require prior approval by DDD or its designee.
- (5) The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

NEW SECTION

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are services to help individuals with their activities of daily living or to better participate in their environment. These services are available in all four HCBS waivers.

(2) Included are devices, controls, appliances, and items necessary for life support; ancillary supplies and equipment necessary to the proper functioning of such items; and durable and nondurable medical equipment not available through Medicaid under the Medicaid state plan.

NEW SECTION

WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies? The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDD.

NEW SECTION

WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

- (1) Prior approval by the department is required for each authorization.
- (2) The department reserves the right to require a second opinion by a department-selected provider.
- (3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the Medicaid state plan.
- (4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.
- (5) Medications, prescribed or nonprescribed, and vitamins are excluded.
- (6) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1900 What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all four HCBS waivers.

(2) Service may be any of the following:

- (a) Psychiatric evaluation,
- (b) Medication evaluation and monitoring,
- (c) Psychiatric consultation.

(3) These services are also available as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-1905 Who are qualified providers of specialized psychiatric services? Providers of specialized psychiatric services must be one of the following licensed or registered, and contracted healthcare professionals:

- (1) Psychiatrist;
- (2) Psychiatric advanced registered nurse practitioner (ARNP); or
- (3) Physician assistant working under the supervision of a psychiatrist.

NEW SECTION

WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive? (1) Specialized psychiatric services are excluded if they are available through other Medicaid programs.

(2) The dollar limitations for aggregate service in your Basic and Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a mental health stabilization service.

(3) Specialized psychiatric services provided as a mental health stabilization service require prior approval by DDD or its designee.

NEW SECTION

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all four HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support; and
- (e) Augmentative communication systems.

NEW SECTION

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American Sign Language instructor;
- (13) Nutritionist;
- (14) Registered counselor; or
- (15) Certified dietician.

NEW SECTION

WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive? (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(2) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-2100 What is supported employment? Supported employment provides intensive ongoing individual or group support in a work setting to adults with developmental disabilities. This service is available in all four HCBS waivers.

(1) Supported employment includes activities needed to sustain paid work by individuals receiving waiver services, including supervision and training.

(2) Supported employment is conducted in a variety of settings; particularly work sites in which persons without disabilities are employed.

NEW SECTION

WAC 388-845-2105 Who is a qualified provider of supported employment? A supported employment provider must be a county, or agencies or individuals contracted with a county or DDD.

NEW SECTION

WAC 388-845-2110 Are there limits to the supported employment I can receive? The following limitations apply to your receipt of supported employment:

(1) You must be age twenty-one and graduated from high school or age twenty-two or older.

(2) Payment will be made only for the adaptations, supervision, training, and support with the activities of daily living you require as a result of your disabilities.

(3) Payment is excluded for the supervisory activities rendered as a normal part of the business setting.

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

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

NEW SECTION

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care. This service is available in all four HCBS waivers.

(1) Transportation provides the person access to waiver services, specified by the plan of care.

(2) Whenever possible, the person must use family, neighbors, friends, or community agencies that can provide this service without charge.

NEW SECTION

WAC 388-845-2205 Who is qualified to provide transportation services? The provider of transportation services can be an individual or agency contracted with DDD.

NEW SECTION

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a Medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace Medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your waiver provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

ASSESSMENT AND PLAN OF CARE

NEW SECTION

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the ICF-MR level of care assessment and the service planning process.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) The ICF-MR level of care assessment identifies your need for waiver services.

(b) The "comprehensive assessment reporting evaluation (CARE)" will determine your eligibility and amount of personal care services.

(c) If you are in the Basic or Basic Plus waiver, a DDD respite assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care (POC) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

NEW SECTION

WAC 388-845-3005 What is the waiver respite assessment? The waiver respite assessment is a series of questions about you and your primary caregiver that will determine the amount of respite care available to you.

NEW SECTION

WAC 388-845-3010 Who must have a waiver respite assessment? (1) If you are in the Basic or Basic Plus waiver and are interested in receiving respite care, and are eligible for respite care per WAC 388-845-1605, your personal care needs must first be assessed by CARE.

(2) A respite assessment will then determine the amount of respite care available to you.

NEW SECTION

WAC 388-845-3015 How is the waiver respite assessment administered? The waiver respite assessment is administered by department staff during an in-person interview with you if you choose to be present, and at least one other person with knowledge of you, such as your primary caregiver.

NEW SECTION

WAC 388-845-3020 Who can be the respondent for the waiver respite assessment? The respondent for your waiver respite assessment must be an adult who is well acquainted with you and can provide the information needed to complete the assessment, such as your primary caregiver.

(1) You cannot be the respondent for your own respite assessment.

(2) The department may select and interview additional respondents as needed to get complete and accurate information.

NEW SECTION

WAC 388-845-3025 How often is this waiver respite assessment completed? Your waiver respite assessment must be completed at the time of your CARE assessment/reassessment.

NEW SECTION

WAC 388-845-3030 What items are assessed to determine my respite allocation? The waiver respite assessment documents information about you and your caregiver. Information must reflect what is currently happening, not what may occur in the future or what has occurred more than thirty days ago. The information documented includes:

- (1) The level of monitoring you require, above and beyond what is typically required for persons of similar age;
- (2) Circumstances in your primary caregiver's life that may impact his/her care giving ability;
- (3) The effect of your disability on other household members;
- (4) Your primary caregiver's care giving responsibilities for others;
- (5) How many parents, legal representatives and/or primary caregivers live in the same household as you;
- (6) Availability of others to provide your care; and
- (7) Your disability related emotional or behavior issues and how that affects your caregiver; the frequency and severity of these issues; and what a caregiver does to help you manage these behaviors.

NEW SECTION

WAC 388-845-3035 How is the waiver respite assessment scored? The responses to the waiver respite assessment are converted to a respite lid.

- (1) The respite lid represents the maximum number of respite hours you are authorized to receive in a twelve-month period.
- (2) You may use as many respite hours as you need, up to your assessed respite lid.

NEW SECTION

WAC 388-845-3040 When will the new respite assessment go into effect? The new respite assessment will be effective at the time of your next CARE assessment/reassessment.

NEW SECTION

WAC 388-845-3045 How will I know the results of my respite assessment? Your respite care allocation will be written into your plan of care as a separate, authorized service.

NEW SECTION

WAC 388-845-3050 What is the effective date of my respite allocation? Your respite care allocation is effective when your respite assessment is completed and authorized in your annual or amended POC.

NEW SECTION

WAC 388-845-3055 What is a waiver plan of care (POC)? (1) The plan of care is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs.

- (2) Your plan must include:
 - (a) The services that you and DDD have agreed are necessary for you to receive in order to address your health and welfare needs as specified in WAC 388-845-3000;
 - (b) Both paid and unpaid services you receive or need;
 - (c) How often you will receive each waiver service; how long you will need it; and who will provide it; and
 - (d) Your signature on the plan indicating your agreement.
- (3) You may choose any qualified provider for the service, who meets all of the following:
 - (a) Is able to meet your needs within the scope of their contract, licensure and certification;
 - (b) Is reasonably available;
 - (c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and
 - (d) Agrees to provide the service at department rates.

NEW SECTION

WAC 388-845-3060 When is my plan of care effective? Your plan of care is effective the date DDD signs and approves it.

NEW SECTION

WAC 388-845-3065 How long is my plan effective? Your plan of care is effective through the last day of the twelfth month following the effective date.

NEW SECTION

WAC 388-845-3070 What happens if I do not sign my plan of care? If DDD is unable to obtain the necessary signature on the plan of care from you or your legal representative, DDD will take one or more of the following actions:

- (1) DDD will continue providing services as identified in your most current POC for up to thirty days from the date you were notified of the plan to implement your most current POC.
- (2) After thirty days, unless you file an appeal, DDD will assume consent and implement the new POC without your signature or the signature of your legal representative.
- (3) You will be provided written notification and appeal rights to this action to implement the new POC.
- (4) Your appeal rights are in WAC 388-825-120 through 388-825-165.

NEW SECTION

WAC 388-845-3075 What if my needs change? You may request a review of your plan of care at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your plan of care with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual plan of care.

NEW SECTION

WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the Basic or Basic Plus waiver? (1) If you are on the Basic or Basic Plus waiver and your assessed need for services exceeds the maximum permitted, DDD will make the following efforts to meet your health and welfare needs:

- (a) Add more available natural supports;
 - (b) Initiate an exception to rule to access available non-waiver services not included in the Basic or Basic Plus waiver other than natural supports;
 - (c) Authorize emergency services up to six thousand dollars per year if your needs meet the definition of emergency services in WAC 388-845-0800.
- (2) If emergency services and other efforts are not sufficient to meet your needs, you will be offered:
- (a) An opportunity to apply for an alternate waiver that has the services you need;
 - (b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;
 - (c) Placement in an ICF/MR.
- (3) If none of the options in subsections (1) and (2) above is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.
- (4) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access is limited by availability of funding.

NEW SECTION

WAC 388-845-3085 What if my needs exceed what can be provided under the CORE or Community Protection waiver? (1) If you are on the CORE or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

- (a) Add more available natural supports;
 - (b) Initiate an exception to rule to access available non-waiver services not included in the CORE or Community Protection waiver other than natural supports;
 - (c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;
 - (d) Offer you placement in an ICF/MR.
- (2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access is limited by availability of funding.

NEW SECTION

WAC 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver? If your identified health and welfare needs are less than what is provided in your current waiver, DDD may terminate you from your current waiver and enroll you in a waiver that meets but does not exceed your assessed need for waiver services.

NEW SECTION

WAC 388-845-3095 Will I have to pay toward the cost of waiver services? (1) Depending on your SSI status, Medicaid status, income and resources, you may be required to participate towards the cost of your care. DDD determines what amount, if any, you pay.

(2) If you live in a licensed facility, you participate from your earned and unearned income per rules in WAC 388-515-1510:

- (a) If you have nonexempt income that exceeds the cost of your waiver services, you may keep the difference.
- (b) If you are eligible for SSI, you pay only for room and board.
- (c) If you are not eligible for SSI, you may be required to participate towards the cost of your waiver services in addition to your facility room and board rate.

NEW SECTION

WAC 388-845-4000 What are my appeal rights under the waiver? You have appeal rights under WAC 388-825-120 to the following decisions:

- (1) Any denial, reductions, or termination of a service.
- (2) A denial or termination of your choice of a qualified provider.
- (3) Your termination from waiver eligibility.
- (4) Denial of your request to receive ICF/MR services instead of waiver services.

NEW SECTION

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? You do not have an appeal right to a denial to be enrolled in a waiver.

NEW SECTION

WAC 388-845-4010 How do I appeal a department action? (1) Your rights to appeal a department decision are in RCW 71A.10.050 and WAC 388-825-120 and are limited to an applicant, recipient, or former recipient of services from the division of developmental disabilities.

(2) If you want to appeal a department action, you must request an appeal within ninety days from receipt of the department notice of the action you are disputing.

NEW SECTION

WAC 388-845-4015 Will my services continue during an appeal? Services may continue according to the provisions contained in WAC 388-825-145.

WSR 05-20-037**EMERGENCY RULES****DEPARTMENT OF REVENUE**

[Filed September 29, 2005, 12:31 p.m., effective October 1, 2005]

Effective Date of Rule: October 1, 2005.

Purpose: WAC 458-20-185 (Rule 185) explains the provisions of chapter 82.26 RCW, Tax on tobacco products. The rule identifies distributors who must pay the tax, the imposition of the tax, applicable penalties, the books and records that must be kept, and when a credit for previously paid tax may be taken.

The department is revising Rule 185 on an emergency basis to incorporate provisions of chapter 180, Laws of 2005 (SB 6097). This legislation made significant statutory changes to chapter 82.26 RCW, including:

- A requirement that distributors and retailers of tobacco products be licensed;
- Requiring that licensed distributors sell only to licensed retailers;
- Changing the measure of the tax from "wholesale value" to "taxable sales value";
- Imposing record-keeping requirements on persons that transport tobacco products; and
- Adding new enforcement provisions and transferring enforcement to the Liquor Control Board.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-185 Tax on tobacco products.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Reasons for this Finding: An emergency adoption is necessary because permanent rules cannot be adopted before the October 1, 2005, effective date of the statutory changes. This rule action will provide needed information to taxpayers and department staff about the new licensing requirements and responsibilities of persons selling tobacco products in this 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 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 29, 2005.

Janis P. Bianchi, Manager

Interpretations and Technical Advice Unit

[AMENDATORY SECTION (Amending WSR 03-12-058, filed 6/2/03)]

WAC 458-20-185 Tax on tobacco products. (1) Introduction. This rule explains the tax liabilities of persons engaged in business as a ~~retailer~~, ~~and/or distributor~~ ~~or sub-jobber~~ of tobacco products. The tax on tobacco products is in addition to all other taxes owed. For example, ~~retailers~~, ~~and distributors~~, ~~and subjobbers~~ are liable for business and occupation tax on their retailing or wholesaling activities, use tax on tobacco products distributed as samples, and litter tax on the value of the tobacco products. See WAC 458-20-186 for tax liabilities associated with taxes which apply exclusively to cigarettes.

(2) **Definitions.** The following definitions apply to this rule unless the context clearly requires otherwise.

(a) "Tobacco products" means all tobacco products except cigarettes as defined in RCW 82.24.010. The term includes:

(i) Cigars, cheroots, stogies, and periques;

(ii) Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;

(iii) Snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut, and other chewing tobaccos; and

(iv) Shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(b) "Manufacturer" means a person who manufactures and sells tobacco products.

(c) "Distributor" means:

(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from ~~without~~ outside the state any tobacco products for sale;

(ii) Any person who makes, manufactures, ~~or fabricates~~, or stores tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products ~~without~~ outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(d) ~~"Subjobber" means any person, other than a tobacco manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.~~

(ed) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(fe) "Sale" means ~~(i) any~~ any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. ~~It~~ (ii) The term "sale" includes all a gifts by a persons engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of chapter 82.26 RCW, ~~or for any other purposes whatsoever.~~

(g) "Wholesale sales price" means ~~the established price for which a manufacturer sells tobacco product to the distributor, exclusive of any discount or other reduction.~~

~~(i) A wholesale sales price that is an established price must reflect the fair market value of the tobacco products. In the case where a seller and buyer establish a sales price that does not reflect fair market value, such as may occur in certain sales between affiliated companies, the wholesale sales price is the fair market value of the tobacco product and not the sales price established by the seller and buyer.~~

~~(ii) The phrase "discount or other reduction" includes any reduction from the established wholesale sales price made to a specific customer or class of customers.~~

~~Example.— Pursuant to a half-price promotion, a manufacturer sells tobacco products to a distributor. The invoice lists \$100 as the price of the product less a \$50 discount resulting in a net invoice of \$50. The tax is due on \$100 which is the wholesale sales price exclusive of any discount or other reduction.~~

(hf) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(ig) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale ~~or consumption~~, including any vessel, vehicle, airplane, train, or vending machine.

(jh) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(ki) "Department" means the department of revenue.

(lj) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, ~~or~~ any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

~~(mk)~~ "Indian country" means the same as defined in WAC 458-20-192 chapter 82.24 RCW.

(l) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(m) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(n) "Board" means the liquor control board.

(o) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(p) "Cigarette" has the same meaning as in RCW 82.24.010.

(q) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(r) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (2)(e)(ii) of this rule, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

For purposes of (i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (2)(j) of this rule and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(s) "Taxpayer" means a person liable for the tax imposed by chapter 82.26 RCW.

(t) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(u) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

(3) Distributor and retail tobacco products vendor licensing requirements and responsibilities.

(a) License required. No person, other than a government instrumentality or an Indian retailer as set forth in subsection of this rule, may engage in the retail or wholesale distribution of tobacco products in this state without a license.

(b) Distributor's license. Prior to selling or distributing tobacco products from a stock of goods in Washington or selling to retailers in Washington, each distributor must first obtain a tobacco distributor's license from the department of licensing.

(i) Background check. Each distributor must undergo a criminal background check before a license will be issued. Chapter 82.26 RCW. The background check must be completed to the satisfaction of the liquor control board and the department of revenue. Failure to provide information sufficient to complete the background check may result in denial of the license. A background check will not be required if the applicant has had a background check under chapter 66.24 or 82.24 RCW.

(ii) Application. Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A distributor license is valid for one year from the date it is issued. The annual fees will not apply if the licensee pays the corresponding annual cigarette distributor fees under RCW 82.24.510.

(iii) Multiple locations. If the distributor sells, or intends to sell, tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(c) Duties and responsibilities of licensed distributors.

(i) Sales restricted. Distributors selling tobacco products in this state may sell those products only to Washington retailers or distributors who have a current tobacco products license, to other licensed distributors, or to Indian tribal entities authorized to possess tobacco products that are not taxed by the state.

(ii) Manufacturers' representatives. Manufacturers selling tobacco products through manufacturer's representatives must provide the department a current list of the names, addresses, and telephone numbers of all such representatives. Mail the list to Washington State Department of Revenue, PO Box 47477, Olympia, WA 98504. The manufacturer must have a distributor's license and its representatives must carry a copy of the license at all times when selling or distributing tobacco products in this state.

(d) Retail license. Prior to the retail sale or distribution of tobacco products, each retailer must first be issued a retail

tobacco license from the department of licensing. A license is required for each location at which tobacco products are sold at retail. Each license must be exhibited at the place of business for which it is issued.

Applications for a license or the renewal of a license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A retail tobacco license is valid for one year from the date it is issued. The annual tobacco license fees will not apply if the licensee pays the corresponding annual cigarette retailer license fees as provided in RCW 82.24.510.

(e) Duties and responsibilities of retailers. A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under chapter 82.26 RCW must be licensed both as a retailer and a distributor. The retailer is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sell, handling, or distribution in this state. For example, if a retailer buys tobacco products from an Indian smoke shop or an out of state distributor that does not have a tobacco distributor license, the retailer must obtain a distributor license and pay the tobacco tax due.

(34) Rate and measure of tax. The Washington state tobacco products tax is an excise tax levied on the wholesale taxable sales price (as defined in RCW 82.26.010 and this rule) on all tobacco products sold, used, consumed, handled, or distributed within the state.

The rate of tax is a combination of statutory percentage rates found in RCW 82.26.020, 82.26.025, and 82.26.028. The total current rate of tax is shown on the current combined excise tax return.

(45) Imposition of tax. The tax is imposed once on all tobacco products sold, used, consumed, handled, or distributed within this state.

(a) When tax is imposed. The tax is imposed at the time the distributor:

(i) Brings, or causes to be brought, into this state from ~~without~~ outside the state tobacco products for sale; or

(ii) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(iii) Ships or transports tobacco products to retailers in this state, to be sold by those retailers; or

(iv) Handles for sale any tobacco products that are within this state but upon which tax has not been imposed. For example, a retailer with a place of business in this state purchases for sale tobacco products from an enrolled tribal member of a federally recognized tribe located within Indian country. Because the tax was not imposed on the enrolled tribal member, the retailer must also be licensed as a distributor ~~pay and~~ pay the tax.

(b) Additional occasion when tax may be imposed. Any retailer who fails to keep invoices as required under chapter 82.32 RCW and which invoices do not conform to the requirements set forth in subsection (5)(b) of this rule is liable for the tax on any uninvoiced tobacco product which that retailer handles for sale.

(c) When an out-of-state person is a distributor who must pay the tax. A person located out-of-state who is selling

tobacco products to Washington wholesalers from a stock of goods located outside this state is not a distributor and therefore is not liable for the tax.

(i) On the other hand, a person located out of state who is selling and shipping tobacco products to Washington retailers from an out of state stock of goods is a distributor and is subject to the tax. If the out of state person is not required to register and pay taxes in Washington, the retailers to whom it sells must pay the tax. However, such out of state persons may elect to register with the state and pay the tax.

(ii) A Washington retailer who purchases tobacco from an out of state stock of goods from a person located out of state who is not required to register and pay taxes in Washington may provide to that person a certificate affirming that the Washington retailer will remit to the state the tax due. Both the out of state person and the Washington retailer should retain a copy of such certificate. The certificate should substantially conform to the example shown below:

Retailer's Certificate of Remittance of Tax

The undersigned retailer hereby certifies that the undersigned will remit to the state the tax due on the tobacco products specified below purchased from seller. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked by the undersigned in writing or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller:
Name of Retailer Effective Date
UBI/Registration #
Address of Retailer
Tobacco products purchased
Agent for Retailer (print)
Signature

(iii) **Tax on samples and sales to dual purchasers.** (i) A person who is located out-of-state and who is required to register and pay taxes in Washington may sell and ship tobacco products to a Washington customer who is both a wholesaler distributor and retailer. Under this circumstance, the person seller, the customer buyer, and the department may enter into a written agreement that identifies the person who will remit to the state the tax due as to those particular sales. The written agreement will contain such other terms and conditions that are acceptable to the department.

(iv) (i) When a person located outside Washington distributes samples in this state, that person must pay the tax on those samples.

(5) **Books and records.** Since the tobacco products tax is paid on returns as computed by the taxpayer rather than by affixing of stamps or decals, the law contains stringent provisions requiring that accurate and complete records be maintained. The records must include all pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products and must be kept for a period of at least five years after the date of the document or the date of the entry appearing in the records.

(7) Record keeping and enforcement.

(a) Books and records. An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained for a period of at least five years. RCW 82.26.060, 82.26.070, and 82.26.080.

(ab) Distributors. Distributors must keep at each registered place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without outside the state or shipped or transported to retailers in this state, and of all sales of tobacco products except retail sales. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(bc) Retailers Retailers and subjobbers. Retailers and subjobbers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(c) Warehouses. Records of all deliveries or shipments (including ownership, quantities) of tobacco products from any public warehouse of first destination in this state must be kept by the warehouse.

(6) Nonpayment of tax by retailers. If the department finds that any nonpayment of tax by the retailer was willful, penalties and interest shall be assessed in accordance with chapter 82.32 RCW. In the case of a second or plural nonpayment of tax by the retailer, penalties and interest will be assessed in accordance with chapter 82.32 RCW without regard to willfulness.

(a) Example. In the course of an audit of Retailer, the department determines that on several occasions Retailer failed to pay the tax. The department does not find the nonpayment to be willful. Retailer owes the tax due on all occasions of nonpayment and the penalties and interest is assessed on all but the first occasion of nonpayment. A few years later Retailer is audited again. The department finds one occasion of nonpayment of tax. In addition to the tax due, penalties and interest will be assessed in accordance with chapter 82.32 RCW.

(b) Example. In the course of an audit of Retailer #2, the department determines that on several occasions Retailer #2 failed to pay the tax. The department determines that the nonpayment of tax was willful. In addition to the tax due on all occasions of nonpayment, Retailer #2 owes penalties and interest on all occasions.

(7d) Reports and returns. The tax is reported on the combined excise tax return to be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be secured from the department.

Out of state wholesalers or distributors selling directly to retailers in Washington should apply for a certificate of registration, and the department will furnish returns for reporting the tax.

Retailers, distributors, and subjobbers may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.

(i) The department may require any person dealing in tobacco products in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in tobacco.

(ii) **Tax Returns.** Every distributor shall report the tax on an excise tax return as provided in RCW 82.32.045.

(e) **Criminal provisions.** Chapter 82.26 RCW prohibits certain activities with respect to tobacco products. Persons handling tobacco within this state must refer to these statutes.

(f) **Search, seizure, and forfeiture.** Any tobacco products in the possession of a person selling tobacco in this state without a license or transporting tobacco products without the proper invoices or delivery tickets may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. In addition, all conveyances, including aircraft, vehicles, or vessels, used to transport the illegal tobacco product may be seized and forfeited.

(g) **Enforcement.** Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers and distributors must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products contained in the premises and to examine the books and records of the business. Failure to allow free access or to hinder or interfere with department personnel and/or enforcement officers of the liquor control board may result in revocation of the tobacco products license.

(h) **Suspension or revocation of distributor or retail tobacco licenses.** (i) The department has full power and authority to revoke or suspend the license of any wholesale or retail tobacco dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.26 RCW or this rule. If a person has both a tobacco license and a cigarette license, revocation of the tobacco license will also result in revocation of the cigarette license.

(ii) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.

(i) **Penalties.** Penalties and interest may be assessed in accordance with chapter 82.32 RCW for nonpayment of tobacco tax.

(8) Transporting tobacco products in Washington.

(a) **Transportation of tobacco products restricted.** No person other than a licensed distributor, an authorized manufacturer's representative, or a licensed retailer may transport tobacco products for sale in this state, except as specifically set forth in chapter 82.26 RCW. Licensed distributors and retailers transporting tobacco products in this state must do so only in their own vehicles unless they have given prior notice to the liquor control board of their intent to transport tobacco products in a vehicle belonging to another person.

(b) **Notice required.** Persons other than licensed distributors, licensed retailers, or authorized manufacturer's representatives intending to transport tobacco products in this state must first give notice to the liquor control board of their intent to do so.

(c) **Invoices required.** All persons transporting tobacco products for sale in this state must have in their actual possession invoices or delivery tickets for the tobacco products that show the true name and address of the consignor or seller, the true name and address of the consignee or buyer, and the quantity and brands of the tobacco products being transported. Persons having tobacco products transported in this state on their behalf by a third party must insure that the persons transporting the tobacco products have the required invoices or delivery tickets in their possession.

(d) **Inspection.** In any case where the department or the board, or any law enforcement officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting tobacco products in violation of chapter 82.26 RCW or this rule, the department, board, or law enforcement officer is authorized to stop the vehicle and inspect it for contraband tobacco products.

(82) Interstate sales and sales to U.S.

(a) The tax does not apply to tobacco products sold to federal government agencies, nor to deliveries to retailers outside the state for resale by such retailers, and a credit may be taken for the amount of tobacco products tax previously paid on such products. RCW 82.26.110. The credit is not available for sales made for delivery outside this state other than sales for resale to retailers. For example, no credit may be taken for a sale of tobacco products delivered to a consumer outside the state.

(b) To document that the tobacco products were sold to a retailer outside the state for resale by such retailer, the person seller may obtain from the retailer/buyer a certificate which that substantially conforms to the following:

Retailer's Certification of Purchase of Tobacco Products for Resale Outside Washington

The undersigned buyer/retailer hereby certifies that the tobacco products specified below are purchased for resale outside this state by the undersigned. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked in writing by the undersigned or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller	Effective Date
UBI/Registration #	
Name of Buyer/Retailer Business	
Address	
Items purchased for resale	
Agent for buyer/retailer (print)	
Signature	

(910) **Returned or destroyed goods.** A credit may also be taken for tobacco products destroyed or returned to the manufacturer on which tax was previously paid. If the credit is claimed against tax owed by the taxpayer or as a refund of

tax paid, taxpayers must retain in their records appropriate documentation, affidavits or certificates conforming to those illustrated below:

(a) Certificate of taxpayer.

Claim for Credit on Tobacco Products
Tax Merchandise Destroyed

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a dealer in tobacco products; that the dealer has destroyed merchandise unfit for sale, said tobacco products having a wholesale sales price of \$; that tobacco tax had been paid on such tobacco products; that the tobacco products were destroyed in the following manner and in the presence of an authorized agent of the department of revenue:

(State date and manner of destruction)

Attested to: By
Date Signature of Taxpayer or Authorized Representative.
Position with Dealer
Dealer
Address of Dealer

APPROVED:
Authorized Agent of
Department of Revenue of the
State of Washington.

(b) Certificate of manufacturer.

Claim for Credit on Tobacco Products
Tax Merchandise Returned:

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

That he/she is (Title) of the (Business Name), a manufacturer of tobacco products; that the manufacturer has received from (Dealer), (Address), a dealer in tobacco products within the State of Washington, certain tobacco products which were unfit for sale, the tobacco products having a wholesale sales price of \$; that the tobacco products were destroyed in the following manner:

(Indicate date and manner of destruction)

Credit issued on Memo No.
credit approved by: Signature of Taxpayer or Authorized Representative
Name of Manufacturer
Address

(10) Enforcement. Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers, distributors, and subjobbers must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products contained in the premises and to examine the books and records of the business. Failure to allow free access or to hinder or interfere with department personnel and/or enforcement officers of the liquor control board may result in the revocation of the business license.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

WSR 05-20-038
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed September 29, 2005, 12:33 p.m., effective October 1, 2005]

Effective Date of Rule: October 1, 2005.

Purpose: WAC 458-20-186 (Rule 186) provides tax-reporting information to persons who sell, use, consume, handle, possess, or distribute cigarettes. The rule explains who is liable for the tax, how and when the cigarette tax imposed by chapter 82.24 RCW is to be paid, and the record-keeping requirements. It explains the application process for wholesale and retail cigarette vendor licenses, and includes references to statutory fees, bonding requirements, and explains the conditions for and process of application for a reinstatement of a license following a revocation under the Administrative Procedure Act.

The department is revising Rule 186 on an emergency basis to incorporate provisions of chapter 180, Laws of 2005 (SB 6097). This legislation made a number of changes with respect to the tobacco products tax program in chapter 82.26 RCW, and amended chapter 82.24 RCW to provide that any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-186 Tax on cigarettes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption is necessary because permanent rules cannot be adopted before the October 1, 2005, effective date of the statutory changes. This rule action will provide needed information to taxpayers and department staff about the licensing requirements and responsibilities of persons selling cigarettes in this 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 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 29, 2005.

Janis P. Bianchi, Manager
Interpretations and Technical Advice Unit

[**AMENDATORY SECTION** (Amending WSR 05-02-035, filed 12/30/04)]

WAC 458-20-186 Tax on cigarettes. (1) Introduction.

This rule addresses those taxes and licensing activities that apply exclusively to cigarettes as defined by RCW 82.24.010. See WAC 458-20-185 for tax liabilities and registration requirements associated with tobacco products other than cigarettes. The tax on cigarettes is in addition to all other taxes owed. For example, retailers and wholesalers are liable for business and occupation tax on their retailing or wholesaling activities, and must collect and remit sales tax on retail sales of cigarettes. Consumers pay the cigarette tax in addition to sales or use tax on purchases of cigarettes for consumption within this state. (Wholesalers not licensed in the state of Washington who are making sales of cigarettes to Indians in accordance with a cigarette tax contract authorized by RCW 43.06.455 must comply with the specific terms of their individual contracts. See also WAC 458-20-192 regarding sales in Indian country.)

(2) **Organization of rule.** The information provided in this rule is divided into seven parts:

(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.

(b) Part II explains the licensing requirements and responsibilities for persons making wholesale or retail sales of cigarettes in this state.

(c) Part III explains the stamping requirements and how the cigarette tax rates are calculated.

(d) Part IV describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

(e) Part V explains the requirements and responsibilities for persons transporting cigarettes in Washington.

(f) Part VI explains the requirements and responsibilities for persons engaged in making delivery sales of cigarettes into this state.

(g) Part VII explains the enforcement and administration of the cigarette tax.

Part I - Tax on Cigarettes

(101) **In general.** The Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.

(a) **Possession.** For the purpose of this rule, a "possessor" of cigarettes is anyone who personally or through an agent, employee, or designee, has possession of cigarettes in this state.

(b) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department of revenue (department) to sell the stamps. Only licensed wholesalers may purchase or obtain cigarette stamps. Except as specifically provided in Part IV of this rule, it is unlawful for any person other than a licensed wholesaler to possess unstamped cigarettes in this state. However, as explained in subsection (102)(b) of this rule, certain consumers may possess unstamped cigarettes for personal consumption if they pay the tax as provided in this rule.

(c) **Imposition of tax.** Ordinarily, the tax obligation is imposed on and collected from the first possessor of unstamped cigarettes. However, failure of an exempt entity with an obligation to collect and remit the tax does not relieve a subsequent nonexempt possessor of unstamped cigarettes from liability for the tax.

(d) **Promotions.** Cigarettes given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state, but are not required to have the stamp affixed. Instead, the manufacturer of the cigarettes must pay the tax on a monthly return filed with the department. See subsection (702) of this rule.

(102) **Possession of cigarettes in Washington state.**

(a) Every person who is (i) in possession of unstamped cigarettes in this state, and (ii) is not specifically exempt by law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

(b) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the cigarette tax as provided in subsection (702) of this rule when they first bring the cigarettes into this state or first possess them in this state. This requirement includes, but is not limited to, delivery sales as described in Part VI of this rule.

(c) **Cigarettes purchased from Indian retailers.** Special rules apply to cigarettes purchased from Indian retailers.

(i) Indians purchasing cigarettes in Indian country are exempt from the state cigarette tax; however, these sales must comply with WAC 458-20-192. Other consumers may purchase cigarettes for their personal consumption from "qualified Indian retailers" without incurring liability for state cigarette tax. A "qualified Indian retailer" is one who is subject to

the terms of a valid cigarette tax contract with the state pursuant to RCW 43.06.455.

(ii) Consumers who purchase cigarettes from Indian retailers who are not subject to a cigarette tax contract with the state must comply with the reporting requirements and remit the cigarette tax as explained in subsection (702) of this rule. These consumers are also liable for the use tax on their purchases. See WAC 458-20-178.

(iii) It is the duty of the consumer in each instance to ascertain his or her responsibilities with respect to such purchases.

(d) **Cigarettes purchased on military reservations.** Active duty or retired military personnel, and their dependants, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part IV). However, such persons are not permitted to give or resell those cigarettes to others.

(e) **Counterfeit cigarettes.** It is unlawful for any person to manufacture, sell, or possess counterfeit cigarettes. A cigarette is counterfeit if (i) it or its packaging bears any logo or marking used by a manufacturer to identify its own cigarettes, and (ii) the cigarette was not manufactured by the owner of that logo or trademark or by any authorized licensee of the manufacturer. RCW 82.24.570.

(f) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part VII.

Part II - Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person, other than a government instrumentality or an Indian retailer as set forth in Part IV of this rule, may engage in the retail or wholesale distribution of cigarettes in this state without a license. No person may engage in the business of sampling within this state unless that person has first obtained a sampler's license. Failure to obtain the required license prior to sampling or selling cigarettes at wholesale or retail is a criminal act. RCW 70.155.050.

(202) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Place of business"** means any location where business is transacted with, or sales are made to, customers. The term includes, but is not limited to, any vehicle, truck, vessel, or the like at which sales are made.

(b) **"Retailer"** means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes, regardless of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(c) **"Retail selling price"** means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, less the tax levied by the state.

(d) **"Wholesaler"** means every person who purchases, sells, or distributes cigarettes, as defined in chapter 82.24 RCW, to retailers for the purpose of resale only.

(203) **Wholesale license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a wholesale cigarette license from the department of licensing.

(a) **Background check.** Each wholesaler must undergo a criminal background check before a license will be issued. RCW 82.24.510. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may, in the department's discretion, result in denial of the license.

(b) **Application.** Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A wholesale cigarette license is valid for one year from the date it is issued.

(c) **Multiple locations.** If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) **Bond required.** Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than \$5,000.00. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department of licensing and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the wholesaler's license.

(204) Duties and responsibilities of licensed wholesalers.

(a) **Stamps.** Only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) **Numbering.** Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers are prohibited from possessing stamps other than those specifically issued to them.

(c) **Sales restricted.** Wholesalers selling cigarettes in this state may sell cigarettes only to Washington retailers who have a current retail cigarette license, to other licensed wholesalers, or to Indian tribal entities authorized to possess cigarettes that are not taxed by the state.

(d) **Unstamped cigarettes.** Except as explained in Part IV of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. (For the purpose of this rule, the term "unstamped cigarette" means any cigarette that does not bear a Washington state cigarette stamp as described in Part III of this rule.) Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to 72 hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than 72 hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers who have furnished a surety bond in an amount determined by the department may set aside, without stamping, that portion of their stock reason-

ably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government. All unstamped stock must be kept separate and apart from stamped stock.

(e) **Transfers.** Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are transferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(205) **Retail license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a retail cigarette license from the department of licensing. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) **Application.** Applications for license or renewal of license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(b) **Vending machines.** Retailers operating cigarette vending machines are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(206) **Duties and responsibilities of retailers.**

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(207) **Additional requirements for manufacturers, wholesalers, retailers, and samplers.** Persons making wholesale or retail sales or engaged in the business of sampling cigarettes in this state must comply with all the provisions of chapters 70.155 and 70.158 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.

(208) **Suspension or revocation of wholesale or retail cigarette licenses.**

(a) The department has full power and authority to revoke or suspend the license of any wholesale or retail cigarette dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.24 RCW or this rule. See RCW 82.24.550 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

(b) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW. For example, if a person has both a cigarette license and a tobacco license, revocation of the cigarette license will also result in revocation of the tobacco license.

(c) A person whose license has been suspended or revoked must not sell or permit the sale of cigarettes or tobacco products on premises occupied or controlled by that person during the the period of the suspension or revocation.

(d) For the purposes of this rule, "tobacco products" has the same meaning as in RCW 82.26.010.

(bd) Any person whose license has been revoked must wait one year following the date of revocation before request-

ing a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.

Part III - Stamping and Rates

(301) Cigarette stamps.

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part IV of this rule. The stamp must be applied to the smallest container or package, unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within 30 days following purchase. Licensed wholesalers are allowed a discount of \$6.00 per thousand stamps affixed ("stamping allowance"), which amount is offset against the purchase price.

(302) Rates.

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in RCW 82.24.020, 82.24.027, and 82.24.028.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

(303) **Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. Documentation supporting the claim must be provided at the time the claim for refund is made.

(a) Refunds for stamped untaxed cigarettes sold to Indian tribal members or tribal entities will include the stamping allowance and will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

(c) The claim for refund must be filed on a form provided by the department. An affidavit or a certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

Part IV - Exemptions

(401) **In general.** There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions

and the procedures that must be followed to qualify for an exemption.

(402) **Government sales.** The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes are purchased from the instrumentality for personal consumption.

(403) **Sales in Indian country.**

(a) The definitions of "Indian," "Indian country," and "Indian tribe," in WAC 458-20-192 apply to this rule. "Cigarette contract" means an agreement under RCW 43.06.450 through 43.06.460.

(b) The cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette contract under RCW 43.06.450 through 43.06.460.

(c) The cigarette tax does not apply to cigarettes sold to an Indian in Indian country for personal consumption; however, those sales must comply with the allocation provisions of WAC 458-20-192. Sales made by an Indian cigarette outlet to nontribal members are subject to the tax, except as provided in (b) above.

(d) See WAC 458-20-192 for information on making wholesale sales of cigarettes to Indians and Indian tribes.

(404) **Interstate commerce.** The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette distributors in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state. Any person engaged in making sales to licensed distributors in other states or making export sales or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette stamps. The unstamped stock must be kept separate and apart from any stamped stock.

Part V - Transporting Cigarettes in Washington

(501) **Transportation of cigarettes restricted.** No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette tax contract subject to the provisions of RCW 43.06.455. Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the liquor control board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

(502) **Notice required.** Persons other than licensed wholesalers intending to transport unstamped cigarettes in this state must first give notice to the liquor control board of their intent to do so.

(503) **Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their

actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

(504) **Consignment.** If the cigarettes transported pursuant to subsection (501), (502), or (503) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state.

(505) **Out-of-state shipments.** Licensed wholesalers shipping cigarettes to a point outside Washington or to a federal instrumentality must, at the time of shipping or delivery, report the transaction to the department. The report must show both (a) complete details of the sale or delivery, and (b) whether stamps have been affixed to the cigarettes.

The report may be made either by submitting a duplicate invoice or by completing a form provided by the department, and must be filed with the department as set forth in subsection (702) of this rule.

(506) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

Part VI - Delivery Sales of Cigarettes

(601) **Definitions.** The definitions in this subsection apply throughout this rule.

(a) **"Delivery sale"** means any sale of cigarettes to a consumer in the state where either: (i) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other online service; or (ii) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes made in this manner is a delivery sale regardless of whether the seller is located within or outside the state. (For example, "Royal Tax-free Smokes," located in the state of Vermont, offers sales via the internet and a toll-free telephone number, and ships its products to consumers in this state. These transactions are delivery sales.) A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed under chapter 82.24 RCW or a retailer licensed under chapter 82.24 RCW is not a delivery sale.

(b) **"Delivery service"** means any private carrier engaged in the commercial delivery of letters, packages, or other containers, that requires the recipient of that letter, package, or container to sign to accept delivery.

(602) **Tax liability.** Cigarettes delivered in this state pursuant to a delivery sale are subject to tax as provided in Part I of this rule. Persons making delivery sales in this state

are required to provide prospective consumers with notice that the sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to such sales.

(603) **Additional requirements.** Persons making delivery sales of cigarettes in this state must comply with all the provisions of chapter 70.155 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.

Part VII - Enforcement and Administration

(701) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of cigarettes must be retained. RCW 82.24.090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

(702) **Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the 15th day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the special programs division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the special programs division no later than the 25th day of the calendar month and must include all transactions occurring in the previous month.

(d) Persons making sales of cigarettes into this state to other than a licensed wholesaler or retailer must file a report as required under Title 15, Chapter 10A, section 376 of the U.S. Code (commonly referred to as the "Jenkins Act" report). This report is due no later than the 10th day of each calendar month and must include all transactions occurring in the previous month.

(e) Persons shipping or delivering any cigarettes to a point outside of this state must submit a report showing full and complete details of the interstate sale or delivery as set forth in Part V of this rule. This report is due no later than the 15th day of the calendar month immediately following the shipment or delivery.

(f) Persons giving away unstamped cigarettes for advertising, promotional, or any other purpose, must report and pay the tax on the number of cigarettes distributed in this state.

(g) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the tax when they first bring the ciga-

rettes into this state or first possess them in this state. The tax is paid with a "Tax Declaration for Cigarettes," which may be obtained from the department.

(703) **Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation or possession of 60,000 or fewer cigarettes.** Transportation or possession of 60,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)(m).

(b) **Transportation or possession of more than 60,000 cigarettes.** Transportation or possession of more than 60,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110 (2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.

(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

(704) **Search, seizure, and forfeiture.** The department or the liquor control board may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.130, et seq., for provisions relating to search, seizure, and forfeiture of property, possible redemption of property, and for treatment of such property in the absence of redemption.

(705) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of \$10.00 per package of unstamped cigarettes or \$250.00 will be assessed. Interest is also assessed on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment. The department may, in its sole discretion, cancel all or part of the penalty for good cause.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

WSR 05-21-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-232—Filed October 6, 2005, 10:07 a.m., effective October 8, 2005, 12:01 a.m.]

Effective Date of Rule: October 8, 2005, 12:01 a.m.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Large numbers of hatchery steelhead are expected to return to the waters above Priest Rapids Dam (12,300). The wild run is also expected to meet minimum spawning requirements. Only a relatively small number of the returning hatchery steelhead are needed for hatchery production. The recreational fishery will reduce the proportion of hatchery origin steelhead contributing to the adult spawning escapement, thereby minimizing impacts to wild steelhead spawners. This will increase the proportion of wild steelhead on the spawning grounds and thus improving the natural production. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 5, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Columbia, Methow, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. October 8, 2005 until further notice, it is unlawful to violate the following provisions in the following waters:

(1) For purposes of this section, "adipose fin clipped steelhead" means steelhead with an adipose fin clip and a healed scar at the site of the fin clip, whether or not any other

fins are clipped or a healed scar is present at any other fin position.

(2) Columbia River from Rocky Reach Dam to Highway 17 Bridge at Bridgeport - Open until further notice. Night closure in effect. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with disk tag attached.

(3) Okanogan River - Open until further notice, except closed from Lake Osoyoos Control Dam (Zosel Dam) downstream to one-quarter mile below railroad trestle. Selective gear rules except lawful to fish from motorized vessels. Night closure in effect. Gamefish: Open to all gamefish downstream from Highway 97 Bridge at Malott. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with disk tag attached. Above Highway 97 Bridge at Malott, open only for adipose fin clipped steelhead. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with disk tag attached.

(4) Similkameen River - Mouth to 400 feet below Enloe Dam - Open November 15 until further notice. Selective gear rules. Night closure in effect. All species: Release all fish except up to two adipose fin clipped steelhead per day may be retained and whitefish may be retained beginning December 1. Release steelhead with disk tag attached. Whitefish gear rules do not apply.

(5) Methow River - Open until further notice. Mouth (Highway 97 Bridge) upstream to the second powerline crossing, and from the first Highway 153 Bridge north of Pateros to the confluence with the Chewuch River. Selective gear rules except lawful to fish from motorized vessels. Night closure in effect. All species: Release all fish except up to two adipose fin clipped steelhead per day may be retained and whitefish may be retained beginning December 1. Release steelhead with disk tag attached. Whitefish gear rules do not apply.

WSR 05-21-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-233—Filed October 6, 2005, 3:09 p.m., effective October 6, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-44-05000G; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 77.12.240.

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: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottom fish, while reserving brood

stock for future fisheries. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 6, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-44-05000H Coastal bottom fish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63 in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 70, No. 192, published October 5, 2005. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Evan Jacoby at (360) 902-2930.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required

to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000G Coastal bottomfish catch limits. (05-142)

WSR 05-21-015

EMERGENCY RULES

UNIVERSITY OF WASHINGTON

[Filed October 7, 2005, 2:14 p.m., effective October 7, 2005]

Effective Date of Rule: Immediately.

Purpose: To amend the eligibility and limitations for specific University of Washington tuition waivers in order to reflect new definitions established by SHB 1174 (RCW 28B.15.621), effective July 24, 2005. SHB 1174 repealed existing waivers for southeast Asia veterans, Persian Gulf veterans, and children of POW/MIAs that had been authorized by RCW 28B.10.265, 28B.15.620, and 28B.15.628, and instead authorized a new permissive waiver for veterans who are Washington domiciles and who were called to active federal duty and who served in a conflict or war on foreign soil/international waters, or in support of such a conflict, and for his/her children or spouse if the veteran became totally disabled or lost his/her life while engaged in active federal

military or naval service, or if the veteran was determined to be a POW/MIA. SHB 1174 also removed eligibility for members of the Washington National Guard and veterans of the Korean conflict to use the state employee tuition exemption, although those with qualifying service can apply for the amended veteran's waiver.

Citation of Existing Rules Affected by this Order: Amending WAC 478-160-163.

Statutory Authority for Adoption: Chapter 28B.15 RCW and RCW 28B.20.130.

Other Authority: University of Washington Board of Regent's Standing Orders, Chapter 1, Section 2.

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

Reasons for this Finding: Immediate adoption of this University of Washington WAC rule amendment is in the best public interest of those students whose tuition and student status would otherwise be jeopardized by the recently enacted state statute's new eligibility definitions for tuition waivers. It is critical to have the university's rule implemented before the impending deadline for autumn quarter tuition payments.

Additionally, the University of Washington has filed a preproposal statement of inquiry with the state and has begun the regular rule-making process to amend this rule permanently.

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

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

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

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

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

Date Adopted: October 4, 2005.

Mark A. Emmert
President

AMENDATORY SECTION (Amending WSR 02-06-021, filed 2/25/02, effective 3/28/02)

WAC 478-160-163 Waivers of tuition and fees. (1) The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. Each of these laws, with the exception of RCW 28B.15.543 and 28B.15.545, authorizes, but does not require, the board of regents to grant waivers for different categories of students and provides for waivers of dif-

ferent fees. The board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. A list of waivers that the board has implemented can be found in the *University of Washington General Catalog*, which is published biennially. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html.

(2) Even when it has decided to implement a waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws. Where the university has chosen to impose specific limitations on a waiver listed in RCW 28B.15.910, those limitations are delineated in subsection (5) of this section. If the university has not imposed specific limitations on a waiver listed in RCW 28B.15.910, the waiver is not mentioned in subsection (5) of this section. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection ~~((6))~~ (7) of this section. All waivers are subject to subsection ~~((6))~~ (7) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are described in the *General Catalog*. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html. Waivers granted under RCW 28B.15.915 are subject to subsection ~~((6))~~ (7) of this section.

(4) Waivers will not be awarded to students participating in self-sustaining courses or programs because they do not pay "tuition," "operating fees," "services and activities fees," or "technology fees" as defined in RCW 28B.15.020, 28B.15.031, 28B.15.041, or 28B.15.051, respectively.

(5) Specific limitations on waivers are as follows:

(a) Waivers authorized by RCW ~~((28B.10.265 for children of Washington domiciles who are prisoners of war or missing in action in Southeast Asia or Korea))~~ 28B.15.621 (2)(a) for eligible veterans and National Guard members, shall be awarded only to undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.

(b) Waivers authorized by RCW 28B.15.621 (2)(b) and (c) for children or spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded only to undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.

(c) Waivers of nonresident tuition authorized by RCW 28B.15.014 for university faculty and classified or professional staff shall be restricted to four consecutive quarters from their date of employment with the University of Washington. The recipient of the waiver must be employed by the

first day of the quarter for which the waiver is awarded. Waivers awarded to immigrant refugees, or the spouses or dependent children of such refugees, shall be restricted to persons who reside in Washington state and to four consecutive quarters from their arrival in Washington state.

~~((e))~~ (d) Waivers authorized by RCW 28B.15.380 for children of ~~((deceased or permanently disabled))~~ police officers or fire fighters who are deceased or permanently disabled, shall be awarded only to undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.

~~((d))~~ (e) Waivers authorized by RCW 28B.15.558 shall be awarded only to:

(i) University of Washington employees who are employed half-time or more, hold qualifying appointments as of the first day of the quarter for which the waivers are requested, are paid monthly, and, for classified staff new to the university, have completed their probationary periods prior to the first day of the quarter; or

(ii) State of Washington permanent employees who are employed half-time or more, are not University of Washington permanent classified employees, are permanent classified or exempt technical college paraprofessional employees, or are permanent faculty members, counselors, librarians or exempt employees at other state of Washington public higher education institutions~~((; or~~

~~((iii) Members of the Washington National Guard.~~

~~((e) Waivers authorized by RCW 28B.15.620 shall be awarded only to Vietnam veterans pursuing their first bachelor's degree to a maximum of 225 college level credits, including credits transferred from other institutions of higher education.~~

~~((f) Waivers authorized by RCW 28B.15.628 shall be awarded only to veterans of the Persian Gulf combat zone pursuing a first bachelor's degree to a maximum of 225 college level credits, including credits transferred from other institutions of higher education)).~~

(6) To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and a DD form 214 (Report of Separation) indicating their service related to specific United States military operations or campaigns fought on foreign soil or in international waters.

(7) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.-910 and may limit the total funding available under RCW 28B.15.915.

WSR 05-21-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-234—Filed October 7, 2005, 2:58 p.m., effective October 12, 2005, 8:00 a.m.]

Effective Date of Rule: October 12, 2005, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-56-330.

Statutory Authority for Adoption: RCW 77.12.240.

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: These rules reopen the fishery and adjust the open days per week. Available harvest shares allow the areas to be opened in this rule. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 7, 2005.

J. P. Koenings
 Director
 by Larry Peck

NEW SECTION

WAC 220-56-33000U Crab—Areas and seasons. Notwithstanding the provisions of WAC 220-56-330, the following areas are open to fishing for crab during the periods indicated:

(1) Marine Areas 9, 10, and 11 - open 8:00 a.m. October 12 through 6:00 p.m. January 2, 2006, open only Wednesday through Saturday of each week, except open seven days per week from December 21 through January 2, 2006.

(2) Marine Area 12 - open 8:00 a.m. October 12 through 6:00 p.m. January 2, 2006.

(3) Marine Areas 6 and 7 - Open 8:00 a.m. November 16 through 6:00 p.m. January 2, 2006, and open only Wednesday through Saturday of each week, except open seven days per week from December 21 through January 2, 2006.

WSR 05-21-017
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 7, 2005, 4:25 p.m., effective October 8, 2005]

Effective Date of Rule: October 8, 2005.

Purpose: The department is amending this rule to codify the existing expedited hearings process for managed care clients as required by federal regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-538-112.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.520.

Other Authority: 42 C.F.R. 431.244 (f)(2).

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

Reasons for this Finding: This emergency rule adoption is necessary while the permanent rule-making process is being completed because current WAC does not reflect existing policy for an expedited fair hearing process for managed care clients as required by 42 C.F.R. 431.244 (f)(2).

This continues the emergency rule adopted under WSR 05-13-066 on June 10, 2005, while MAA completes the permanent rule-making process begun under WSR 05-04-082. MAA anticipates filing the permanent rule proposal (CR-102) by November of 2005.

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

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

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

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

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

Date Adopted: September 27, 2005.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

WAC 388-538-112 The department of social and health services' (DSHS) ((fair)) hearing process for enrollee appeals of managed care organization (MCO) actions. (1) The ((fair)) hearing process described in chapter 388-02 WAC applies to the ((fair)) hearing process described in this chapter. Where a conflict exists, the requirements in this chapter take precedence.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to filing an appeal (a request for a department ((fair)) hearing) with MAA. See WAC 388-538-110 for the MCO grievance system.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may file a request for a department ((fair)) hearing within the following time frames:

(a) For appeals regarding a standard service, within ninety calendar days of the date of the MCO's notice of the resolution of the appeal.

(b) For appeals regarding termination, suspension, or reduction of a previously authorized service, ((or)) and the enrollee is requesting continuation of services, within ten calendar days of the date on the MCO's notice of the resolution of the appeal.

(4) The entire appeal process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a department ((fair)) hearing.

(5) Expedited hearing process:

(a) When the enrollee or the enrollee's representative requests a hearing indicating the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function, the office of administrative hearings (OAH) will approve or deny the request.

(b) When approving an expedited hearing, OAH will advise the enrollee, MCO and the department as expeditiously as the enrollee's health condition requires, but no later than three business days after receiving the case file from the MCO.

(c) When denying an expedited hearing, OAH will advise the enrollee orally within two days of request and confirm with a written decision with three business days after receiving the case file from the MCO:

(6) Parties to the ((fair)) hearing include the department, the MCO, the enrollee, and the enrollee's representative or the representative of a deceased enrollee's estate.

((6)) (7) If an enrollee disagrees with the ((fair)) hearing decision, then the enrollee may request an independent review (IR) in accordance with RCW 48.43.535.

((7)) (8) If there is disagreement with the IR decision, the department of social and health services (DSHS) board of appeals (BOA) issues the final administrative decision.

WSR 05-21-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-235—Filed October 10, 2005, 3:54 p.m., effective October 10, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.240.

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 second week of October fishing periods for the late fall commercial fishing season. Harvestable salmon and sturgeon are available. The season is consistent with the 2005-2007 interim management agreement and the 2005 non-Indian allocation agreement. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. A biological opinion covering Columbia River fisheries was received from NMFS on May 9, 2005. Regulation is consistent with compact action of October 10, 2005. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 10, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000R Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. OPEN AREA: SMCRA 1A, 1B, 1C, 1D, 1E

a. SEASON: 7:00 a.m. October 11 through 7:00 a.m. October 12

7:00 a.m. October 13 through 7:00 a.m. October 14

b. GEAR: Drift gill nets only. 9-inch minimum mesh size and 9 3/4-inch maximum mesh size.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. SANCTUARIES: Elochoman, Abernathy Cowlitz and Kalama-A, Lewis-A, Sandy and Washougal Rivers.

e. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. OPEN AREA: Blind Slough/Knappa Slough Select Area. Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 6:00 p.m. to 8:00 a.m.

GEAR: Gillnet - 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

b. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

c. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

3. OPEN AREA: Tongue Point/South Channel Select Area. Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, 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. All waters are under concurrent jurisdiction. 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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

b. GEAR: In the Tongue Point area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. In the South Channel area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

4. OPEN AREA: Deep River Select Area. Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

b. GEAR: The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

5. OPEN AREA: Steamboat Slough Select Area. Steamboat Slough fishing area includes all waters bounded by markers on Price Island and the Washington shore, at both ends of Steamboat Slough. All open waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 6:00 p.m. to 8:00 a.m.

b. GEAR: The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Q Columbia River season
below Bonneville. (05-230)

WSR 05-21-026

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 10, 2005, 4:21 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: To reconcile SSI-related medical program resource eligibility rules with federal law. This continues the emergency rule adopted under WSR 05-13-074 on June 13, 2005. This adoption is necessary while the permanent rule-making process begun under WSR 04-23-101 is completed. A public hearing on the permanent rule proposal filed as WSR 05-19-126 is scheduled for October 25, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-475-0550, 388-475-0700, 388-475-0800, 388-475-0820, and 388-475-0860.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Other Authority: Social Security Act as amended by Public Law 108-203.

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

Reasons for this Finding: The state must adopt rules to comply with federal Medicaid law in Public Law 108-203, Subtitle D, Sections 430, 431, and 435 in order to continue receiving federal funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: September 27, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-09-004, filed 4/7/04, effective 6/1/04)

WAC 388-475-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a client who is blind or disabled to fulfill a department approved self-sufficiency plan.

(2) Retroactive payments from SSI or RSDI, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for ~~((six))~~ **nine** months following the month of receipt. This exclusion applies to:

(a) Payments received by the client, spouse, or any other person financially responsible for the client;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through (11) as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to Native Americans as listed in 20 CFR 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 CFR 416.1236.

(6) The following Native American/Alaska Native funds are excluded resources:

(a) Resources received from a Native Corporation under the Alaska Native Claims Settlement Act, including:

(i) Shares of stock held in a regional or village corporation;

(ii) Cash or dividends on stock received from the Native Corporation up to two thousand dollars per person per year;

(iii) Stock issued by a native corporation as a dividend or distribution on stock;

(iv) A partnership interest;

(v) Land or an interest in land; and

(vi) An interest in a settlement trust.

(b) All funds contained in a restricted Individual Indian Money (IIM) account.

(7) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were

relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(8) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(9) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(10) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Rey Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(11) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(12) Earned income tax credit refunds and payments are excluded as resources ~~((during the month of receipt and the following month))~~ **for nine months after the month of receipt.**

(13) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(14) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The client intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a State or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

(15) Insurance proceeds or other assets recovered by a Holocaust survivor as defined in WAC 388-470-0026(4).

(16) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

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

(17) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(18) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled individuals to set aside resources necessary for the achievement of the plan's goals, are excluded.

(19) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(20) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that Code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

~~((22))~~ (21) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

~~((23))~~ (22) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.

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

AMENDATORY SECTION (Amending WSR 04-09-004, filed 4/7/04, effective 6/1/04)

WAC 388-475-0700 SSI-related medical—Income eligibility. (1) In order to be eligible, a client is required do everything necessary to obtain any income to which they are entitled including (but not limited to):

(a) Annuities,

(b) Pensions,

(c) Unemployment compensation,

(d) Retirement, and

(e) Disability benefits; even if their receipt makes the client ineligible for department services, unless the client can provide evidence showing good reason for not obtaining the benefits.

The department does not count this income until the client begins to receive it.

(2) Income is budgeted prospectively for all medical programs.

(3) Anticipated nonrecurring lump sum payments other than retroactive SSI/SSDI payments are considered income in the month received, subject to reporting requirements in

WAC 388-418-0007(4). Any unspent portion is considered a resource the first of the following month.

(4) The department follows income and resource methodologies of the Supplemental Security Income (SSI) program defined in federal law when determining eligibility for SSI-related medical or Medicare Savings programs unless the department adopts rules that are less restrictive than those of the SSI program.

(5) Exceptions to the SSI income methodology:

(a) Lump sum payments from a retroactive SSDI benefit, when reduced by the amount of SSI received during the period covered by the payment, are not counted as income;

(b) Unspent retroactive lump sum money from SSI or SSDI is excluded as a resource for ~~((six))~~ nine months following receipt of the lump sum; and

(c) Both the principal and interest portions of payments from a sales contract, that meet the definition in WAC 388-475-0350(10), are unearned income.

(6) To be eligible for categorically needy (CN) SSI-related medical coverage, a client's countable income cannot exceed the CN program standard described in:

(a) WAC 388-478-0065 through 388-478-0085 for non-institutional medical unless living in an alternate living facility; or

(b) WAC 388-513-1305(2) for noninstitutional CN benefits while living in an alternate living facility; or

(c) WAC 388-513-1315 for institutional and waiver services medical benefits.

(7) To be eligible for SSI-related medical coverage provided under the medically needy (MN) program, a client must:

(a) Have countable income at or below the MN program standard as described in WAC 388-478-0070; or

(b) Satisfy spenddown requirements described in WAC 388-519-0110~~((-01))~~;

(c) Meet the requirements for noninstitutional MN benefits while living in an alternate living facility (ALF). See WAC 388-513-1305(3) ~~((and 388-515-1540))~~; or

(d) Meet eligibility for the MN residential waiver program. See WAC 388-515-1540.

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

AMENDATORY SECTION (Amending WSR 04-09-005, filed 4/7/04, effective 6/1/04)

WAC 388-475-0800 SSI-related medical—General income exclusions. The department excludes, or does not consider, the following when determining a client's eligibility for SSI-related medical programs:

(1) The first twenty dollars per month of unearned income. If there is less than twenty dollars of unearned income in a month, the remainder is excluded from earned income in that month.

(a) The twenty-dollar limit is the same, whether applying it for a couple or for a single person.

(b) The disregard does not apply to income paid totally or partially by the federal government or a nongovernmental agency on the basis of an eligible person's needs.

(c) The twenty dollars disregard is applied after all exclusions have been taken from income.

(2) Income that is not reasonably anticipated or is received infrequently or irregularly, whether for a single person or each person in a couple when it is:

(a) Earned and does not exceed a total of ~~((ten))~~ thirty dollars per ~~((month))~~ calendar quarter; or

(b) Unearned and does not exceed a total of ~~((twenty))~~ sixty dollars per ~~((month))~~ calendar quarter;

(c) Increases in a client's burial funds that were established on or after November 1, 1982 if the increases are the result of:

(i) Interest earned on excluded burial funds; or

(ii) Appreciation in the value of an excluded burial arrangement that was left to accumulate and become part of separately identified burial funds.

(3) Essential expenses necessary for a client to receive compensation (e.g., necessary legal fees in order to get a settlement);

(4) Receipts, which are not considered income, when they are for:

(a) Replacement or repair of an exempt resource;

(b) Prepayment or repayment of medical care paid by a health insurance policy or medical service program; or

(c) Payments made under a credit life or credit disability policy.

(5) The fee a guardian or representative payee charges as reimbursement for providing services, when such services are a requirement for the client to receive payment of the income.

(6) Funds representing shared household costs.

(7) Crime victim's compensation.

(8) The value of a common transportation ticket, given as a gift, that is used for transportation and not converted to cash.

(9) Gifts that are not for food, clothing or shelter, and gifts of home produce used for personal consumption.

(10) The department does not consider in-kind income received from someone other than a person legally responsible for the individual unless it is earned. Therefore, the following in-kind payments are not counted when determining eligibility for SSI-related medical programs.

(a) In-kind payments for services paid by a client's employer if:

(i) The service is not provided in the course of an employer's trade or business; or

(ii) It is in the form of food and/or shelter that is:

(A) On the employer's business premises;

(B) For the employer's convenience; and

(C) If shelter, acceptance by the employee is a condition of employment.

(b) In-kind payments made to people in the following categories:

(i) Agricultural employees;

(ii) Domestic employees;

(iii) Members of the Uniformed Services;

(iv) Persons who work from home to produce specific products for the employer from materials supplied by the employer.

AMENDATORY SECTION (Amending WSR 04-09-005, filed 4/7/04, effective 6/1/04)

WAC 388-475-0820 SSI-related medical—Child-related income exclusions. (1) The department excludes an allowance from a person's earned and/or unearned income for a child living in the home when:

(a) The minor child lives with an SSI-related parent; and

(b) The minor child is not receiving a needs-based cash payment such as TANF or SSI; and

(c) The SSI-related parent is single; or

(d) The SSI-related parent lives with a spouse who has no income; and

(e) The individual applying for or receiving SSI-related medical benefits is the adult parent. The maximum allowance is one-half the Federal Benefit Rate (FBR) for each child. The child's countable income, if any, is subtracted from the maximum child's allowance ~~((One third of the child support received for the child is excluded from the child's income))~~ before determining this allowance.

(2) Foster care payments received for a child who is not SSI-eligible and who is living in the household, placed there by a licensed, nonprofit or public child placement or child-care agency are excluded from income regardless of whether the person requesting or receiving SSI-related medical is the adult foster parent or the child who was placed.

(3) Adoption support payments, received by an adult for a child in the household that are designated for the child's needs, are excluded as income. Adoption support payments that are not specifically designated for the child's needs are not excluded and are considered unearned income to the adult.

(4) ~~((Up to one thousand three hundred seventy dollars per month of a child's))~~ Earned income ~~((, but not more than five thousand five hundred twenty dollars per year.))~~ of a person under age twenty-two is excluded if ~~((the child))~~ that person is a student.

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

(6) One-third of child support payments received for a child are excluded from the child's income.

(7) Any portion of a grant, scholarship, ~~((or))~~ fellowship, or gift used ~~((to pay))~~ for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income for nine months after the month of receipt.

~~((7))~~ (8) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that Code, is excluded as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

~~((8))~~ (9) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children are excluded from income.

~~((9))~~ (10) Unless it is specifically contributed to the client, all earned income of an ineligible or nonapplying person under the age of twenty-one who is a student:

- (a) Attending a school, college, or university; or
- (b) Pursuing a vocational or technical training program designed to prepare the student for gainful employment.

AMENDATORY SECTION (Amending WSR 04-09-005, filed 4/7/04, effective 6/1/04)

WAC 388-475-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the department excludes when determining eligibility for SSI-related medical programs. These exclusions include, but are not limited to:

- (1) Income tax refunds;
- (2) Federal earned income tax credit (EITC) payments for nine months after the month of receipt;
- (3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;
- (4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h)(1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);
- (5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;
- (6) Certain cash or in-kind payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- (7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;
- (8) Assistance based on need, including:
 - (a) Any federal SSI income or state supplement payment (SSP) based on financial need;
 - (b) Food stamps;
 - (c) GA-U;
 - (d) CEAP;
 - (e) TANF; and
 - (f) Bureau of Indian Affairs (BIA) general assistance.
- (9) Housing assistance from a federal program such as HUD if paid under:
 - (a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);
 - (b) National Housing Act (section 1701 et seq. of 12 U.S.C.);
 - (c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);
 - (d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.); or
 - (e) Section 202(h) of the Housing Act of 1959;
 - (f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations;
- (10) Energy assistance payments including:

- (a) Those to prevent fuel cutoffs, and
- (b) To promote energy efficiency.
- (11) Income from employment and training programs as specified in WAC 388-450-0045.
- (12) Foster Grandparents program;
- (13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;
- (14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035).
- (15) Educational assistance as specified in WAC 388-450-0035.
- (16) Up to two thousand dollars per year derived from an individual's interest in Indian trust or restricted land.
- (17) Native American benefits and payments as specified in WAC 388-450-0040 and other Native American payments excluded by federal statute. For a complete list of these payments, see 20 CFR 416, Subpart K, Appendix, IV.
- (18) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;
- (19) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;
- (20) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;
- (21) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);
- (22) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;
- (23) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);
- (24) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;
- (25) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;
- (26) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;
- (27) Any interest earned from payments described in subsections (1) through (26) is counted as unearned income, unless otherwise excluded by law.

WSR 05-21-027

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 10, 2005, 4:23 p.m., effective October 10, 2005]

Effective Date of Rule: October 10, 2005.

Purpose: WAC 388-538-063 is being amended to remove incorrect authorization language.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-538-063.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.035, and 74.09.522.

Other Authority: ESSB 5405, section 209(15), chapter 25, Laws of 2003 1st sp.s.

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

Reasons for this Finding: This emergency rule adoption is necessary while the permanent rule-making process is being completed. The current WAC incorrectly directs the client to obtain authorization for services from the managed care organization (MCO) instead of HRSA. This incorrect language causes confusion and delays in the delivery of medically necessary services and results in the loss of due process rights for the enrollee. As the WAC now reads, enrollees must exhaust the MCO's appeal process before they can file a fair hearing. For GAU clients, the MCO does not have an appeal process because it is HRSA that approves or denies services. This creates a "catch twenty-two" for enrollees who have no redress through the MCO, but also cannot file a fair hearing request until the rule is corrected.

This continues the emergency rule adopted under WSR 05-13-073 on June 13, 2005, while MAA completes the permanent rule-making process begun under WSR 05-04-082. MAA anticipates filing the permanent rule proposal (CR-102) by November of 2005.

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

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

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

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

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

Date Adopted: September 27, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-15-003, filed 7/7/04, effective 8/7/04)

WAC 388-538-063 Mandatory enrollment in managed care for GAU clients. (1) The purpose of this section is to describe the managed care requirement for general assistance unemployable (GAU) clients mandated by the Laws of 2003, chapter 25, section 209(15).

(2) The only sections of chapter 388-538 WAC that apply to GAU clients described in this section are incorporated by reference into this section.

(3) To receive medical assistance administration (MAA) paid medical care, GAU clients must enroll in a managed care plan as required by WAC 388-505-0110(7) when they reside in a county designated as a mandatory managed care plan county.

(4) GAU clients are exempt from mandatory enrollment in managed care if they:

(a) Are American Indian or Alaska Native (AI/AN); and

(b) Meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants.

(5) In addition to subsection (4), MAA will exempt a GAU client from mandatory enrollment in managed care or end an enrollee's enrollment in managed care in accordance with WAC 388-538-130(3) and 388-538-130(4).

(6) On a case-by-case basis, MAA may grant a GAU client's request for exemption from managed care or a GAU enrollee's request to end enrollment when, in MAA's judgment:

(a) The client or enrollee has a documented and verifiable medical condition; and

(b) Enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(7) MAA enrolls GAU clients in managed care effective on the earliest possible date, given the requirements of the enrollment system. MAA does not enroll clients in managed care on a retroactive basis.

(8) Managed care organizations (MCOs) that contract with MAA to provide services for GAU clients must meet the qualifications and requirements in WAC 388-538-067 and 388-538-095 (3)(a), (b), (c), and (d).

(9) MAA pays MCOs capitated premiums for GAU enrollees based on legislative allocations for the GAU program.

(10) GAU enrollees are eligible for the scope of care as described in WAC 388-529-0200 for medical care services (MCS). Other scope of care provisions that apply:

(a) A client is entitled to timely access to medically necessary services as defined in WAC 388-500-0005;

(b) MCOs cover the services included in the managed care contract for GAU enrollees. MCOs may, at their discretion, cover services not required under the MCO's contract for GAU enrollees;

(c) MAA pays providers on a fee-for-service basis for the medically necessary, covered medical care services not covered under the MCO's contract for GAU enrollees; and

(d) ~~((Even if a service is covered by MAA on a fee-for-service basis, it is the MCO, and not MAA, from whom a GAU enrollee must obtain prior authorization before receiving the service; and~~

~~(e)))~~ A GAU enrollee may obtain emergency services in accordance with WAC 388-538-100.

(11) MAA does not pay providers on a fee-for-service basis for services covered under the MCO's contract for GAU enrollees, even if the MCO has not paid for the service,

regardless of the reason. The MCO is solely responsible for payment of MCO-contracted health care services that are:

- (a) Provided by an MCO-contracted provider; or
- (b) Authorized by the MCO and provided by nonparticipating providers.

(12) The following services are not covered for GAU enrollees unless the MCO chooses to cover these services at no additional cost to MAA:

- (a) Services that are not medically necessary;
- (b) Services not included in the medical care services scope of care;
- (c) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions; and
- (d) Services received from a nonparticipating provider requiring prior authorization from the MCO that were not authorized by the MCO.

(13) A provider may bill a GAU enrollee for noncovered services described in subsection (12), if the requirements of WAC 388-502-0160 and 388-538-095(5) are met.

(14) The grievance and appeal process found in WAC 388-538-110 applies to GAU enrollees described in this section.

(15) The fair hearing process found in chapter 388-02 WAC and WAC 388-538-112 applies to GAU enrollees described in this section.

WSR 05-21-029

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed October 11, 2005, 8:06 a.m., effective October 11, 2005]

Effective Date of Rule: Immediately.

Purpose: This rule-making order amends WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles, by adding *Glyceria maxima* to the list of aquatic plants prohibited from sale in Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 16-752-505.

Statutory Authority for Adoption: Chapters 17.24 and 34.05 RCW.

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

Reasons for this Finding: The intrusion into this state of nonnative, invasive plant species is of grave and immediate concern. *Glyceria maxima*, an aquatic weed, has been identified in two ponds in Snohomish County. It requires early intervention to successfully eradicate, as it is known as a very aggressive colonizer of freshwater environments. The biological window of opportunity to eliminate this infestation before anticipated seed set is very brief and does not allow time to complete the permanent rule-making process. This rule is being adopted to protect the economic well-being of the nursery industry, and the environmental quality and natural resources of 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 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 1, Repealed 0.

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

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

Date Adopted: October 11, 2005.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 04-19-004, filed 9/2/04, effective 10/3/04)

WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles. All plants and plant parts of the following are regulated articles under this chapter:

Scientific Name	Common Name
<i>Butomus umbelatus</i>	flowering rush
<i>Cabomba caroliniana</i>	fanwort
<i>Crassula helmsii</i>	Australian swamp stonecrop
<i>Egeria densa</i>	Brazilian elodea
<i>Epilobium hirsutum</i>	hairy willow herb
<i>Glossostigma diandrum</i>	mud mat
<u><i>Glyceria maxima</i></u>	<u>reed sweetgrass, tall manna grass</u>
<i>Hydrilla verticillata</i>	hydrilla
<i>Hydrocharis morsus-ranae</i>	European frog-bit
<i>Lagarosiphon major</i>	African elodea
<i>Ludwigia hexapetala</i>	water primrose
<i>Lysimachia vulgaris</i>	garden loosestrife
<i>Murdannia keisak</i>	marsh dew flower, Asian spiderwort
<i>Myriophyllum aquaticum</i>	parrotfeather
<i>Myriophyllum spicatum</i>	Eurasian watermilfoil
<i>Najas minor</i>	slender-leaved naiad, brittle naiad
<i>Nymphoides peltata</i>	yellow floating heart
<i>Sagittaria graminea</i>	grass-leaved arrowhead
<i>Sagittaria platyphylla</i>	delta arrowhead
<i>Spartina alterniflora</i>	smooth cordgrass
<i>Spartina anglica</i>	common cordgrass
<i>Spartina densiflora</i>	dense-flowered cordgrass
<i>Spartina patens</i>	salt meadow cordgrass

Scientific Name	Common Name
<i>Trapa natans</i>	water chestnut, bull nut
<i>Trapa bicornus</i>	water caltrap, devil's pod, bat nut
<i>Utricularia inflata</i>	swollen bladderwort

WSR 05-21-033**EMERGENCY RULES****DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-236—Filed October 11, 2005, 4:06 p.m., effective October 11, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100S; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Discontinues the commercial sale of platform and hook and line caught fish from the mainstem Columbia River. Opens commercial fishery in the Klickitat River and Drano Lake. Season is consistent with the 2005-2007 management agreement and the biological opinion. Consistent with action of the Columbia River compact of October 10, 2005, and conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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: October 11, 2005.

Lew Atkins
for Jeff Koenings
Director

NEW SECTION

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, shad, carp, or sturgeon taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and the Klickitat and White Salmon rivers, and Drano Lake, except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, sturgeon, steelhead and walleye under the following provisions pursuant to lawfully enacted tribal rules:

1) Klickitat River

a) Open Areas: Klickitat River. Tribal commercial fishing is allowed in the waters of the Klickitat River from the mouth to the confluence with the Big Muddy Creek, provided that fishing is not allowed within 25 feet of the entrance to any fishway or inside the boundary markers at the Klickitat Hatchery.

b) Open Periods: 12:00 p.m. Mondays to 6:00 p.m. Saturdays, weekly immediately through December 24, 2005.

c) Gear: Hoop nets, dip bag nets, or hook and line.

d) Allowable sale includes: Only Chinook and Coho Salmon taken within the fishing area described above may be sold. Chinook and Coho that are sold outside a 1-mile radius from the Klickitat Falls may be sold by Yakama Nation Transfer Permit only. Transfer Permits may be obtained from the Yakama Nation Tribal Council.

2) Drano Lake

a) Open Area: The area open to fishing encompasses all of Drano Lake from the highway bridge at the outlet to the orange markers near the mouth of the Little White Salmon River.

b) Open Periods: Tuesday nights at 9:00 p.m. until Wednesdays at 12:00 p.m., immediately until further notice.

c) Gear: Each fisher may use one piece of legal gear, which includes floating gillnets not longer than 150 feet, hoopnets fished from bank or boat, or hook and line with bait or lures. All other types of gear and methods are prohibited. Snagging or gaffing of fish and driftnetting are specifically prohibited.

d) Allowable Sale: Commercial sale is allowed during this fishery. Allowable sales are salmon, including steelhead, walleye, shad, and carp. Sturgeon may not be sold. However, sturgeon between 45 inches and 60 inches in total length may be kept for subsistence purposes.

e) Miscellaneous: Fishers must have in their possession at all times a Drano Lake fishery permit and a Yakama Enrollment card. Failure to present the permit or enrollment card upon demand by tribal game wardens may result in a citation. All fish must be landed at the boat ramp at Drano Lake for inspection by the tribal monitor or the enforcement agent. Fish shall not be landed at any other location.

3) Effective 6:00 p.m. October 12, sale of platform and hook and line caught fish in SMCRA 1F, 1G, and 1H is not allowed, except sturgeon may be retained in SMCRA 1G.

4) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

5) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a. Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b. Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c. Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across

the thread of the river one mile downstream from McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100S Columbia River salmon seasons above Bonneville Dam. (05-231)

**WSR 05-21-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-238—Filed October 11, 2005, 4:07 p.m., effective October 12, 2005, 6:00 a.m.]

Effective Date of Rule: October 12, 2005, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05700X; and amending WAC 220-32-057.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Reopens The Dalles Pool for a sturgeon set line season. There is room on the guideline to allow for a season, and harvestable numbers of sturgeon are available. Conforms state rules with tribal rules. Consistent with compact action of October 10, 2005. There is insufficient time to promulgate permanent regulations.

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: October 11, 2005.

Lew Atkins
for Jeff Koenings
Director

NEW SECTION

WAC 220-32-05700X Columbia River sturgeon seasons above Bonneville Dam Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

- 1) Open period: 6:00 a.m. October 12, 2005 through 6:00 p.m. December 31, 2005.
- 2) Open area: 1G.
- 3) Gear: Setlines. Sturgeon caught in the platform fishery may be sold.
- 4) During the season specified in Section 1, it is unlawful to:
 - a) retain for commercial purposes sturgeon less than 48 inches or greater than 60 inches in length.
 - b) sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter RCW 75.28, or to sell or barter sturgeon eggs at retail.
 - c) deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.
 - 5) During the season specifies in Section 1, it is unlawful to use set line gear:
 - a) with more than 100 hooks per set line
 - b) with hooks less than the minimum size of 9/0
 - c) with treble hooks
 - d) without visible buoys attached and with buoys that do not specify operator and tribal identification

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. December 31, 2005:

WAC 220-32-05700X Columbia River sturgeon seasons above Bonneville Dam.

**WSR 05-21-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-239—Filed October 11, 2005, 4:08 p.m., effective October 15, 2005, 7:30 p.m.]

Effective Date of Rule: October 15, 2005, 7:30 p.m.
Purpose: Amend personal use fishing rules.
Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500G; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.240.

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 close the recreational shrimp season and revert back to permanent rules. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 11, 2005.

Lew Atkins
for Jeff Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:30 p.m. October 15, 2005:

WAC 220-56-32500G Shrimp—Areas and seasons. (05-143)

**WSR 05-21-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-240—Filed October 11, 2005, 4:09 p.m., effective October 16, 2005, 12:01 a.m.]

Effective Date of Rule: October 16, 2005, 12:01 a.m.
Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100F; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

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

Reasons for this Finding: This rule is necessary to meet allocation, conservation, and management agreements. Openings and closures are consistent with these elements. Commercial shrimp trawl quotas are available in the area opened by this rule. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 11, 2005.

Lew Atkins
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp beam trawl gear:

(a) Marine Fish Shellfish Catch and Reporting Areas 23AE (east), 23B and 25A open immediately until further notice outside of the shrimp districts for non-spot shrimp.

(b) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(c) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 16, 2005:

WAC 220-52-05100F Puget Sound shrimp pot and beam trawl fishery—Season (05-216)

WSR 05-21-037 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 05-241—Filed October 11, 2005, 4:10 p.m., effective October 12, 2005, 8:00 a.m.]

Effective Date of Rule: October 12, 2005, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000M; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes which have been entered as required by court order. The pot limit for the commercial crab fishery in the Puget Sound licensing district is to maintain commercial harvest allocation plans. There is insufficient time to promulgate 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: October 11, 2005.

Lew Atkins
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-04000N Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective 8:00 a.m. October 12, 2005 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B. The remaining 25 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

(2) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E. The remaining 25 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. October 12, 2005:

WAC 220-52-04000M Commercial crab fishery—
Lawful and unlawful gear,
methods, and other unlawful
acts. (05-209)

WSR 05-21-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-242—Filed October 11, 2005, 4:11 p.m., effective October 15,
2005, 12:01 p.m.]

Effective Date of Rule: October 15, 2005, 12:01 p.m.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: 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.

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: October 11, 2005.

Lew Atkins
for Jeff Koenings
Director

NEW SECTION

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

1. Effective 12:01 p.m. October 15 through 11:59 p.m. October 17, 2005, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

2. Effective 12:01 p.m. October 15 through 11:59 p.m. October 17, 2005, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County) and that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

3. Effective 12:01 p.m. October 18 through 11:59 p.m. October 18, 2005, razor clam digging is allowed in Razor Clam Area 2 and that portion of Razor Clam Area 3 that is between the Copalis River (Grays Harbor County) and the southern boundary of the Quinault Indian Reservation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 18, 2005:

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

WSR 05-21-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-237—Filed October 13, 2005, 11:54 a.m., effective October 16,
2005, 12:01 a.m.]

Effective Date of Rule: October 16, 1005 [2005], 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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: Late run hatchery coho are expected to return below numbers needed for hatchery broodstock. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 12, 2005.

Philip Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Elochoman River. Notwithstanding the provisions of WAC 232-28-619, effective October 16 through December 31, 2005, it is unlawful to fish for or possess salmon in those waters of the Elochoman River from mouth to West Fork.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2006:

WAC 232-28-61900Y Exceptions to statewide rules—Elochoman River.

**WSR 05-21-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-243—Filed October 13, 2005, 4:03 p.m., effective October 13, 2005]

Effective Date of Rule: Immediately.
Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-28200A; and amending WAC 232-28-282.

Statutory Authority for Adoption: RCW 77.12.240.

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 Schoolhouse Fire caused the hunt area to be temporarily closed. The hunting opportunity was curtailed during this emergency closure, and the area has reopened. Affording hunting opportunity is consistent with the management objective, and the hunt season needs to be lengthened to afford this opportunity. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 12, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 232-28-28200A Rocky Mountain bighorn sheep auction or raffle permit. Notwithstanding the provisions of WAC 232-28-282, the hunting season for the 2005 Rocky Mountain bighorn sheep auction or raffle permit is immediately through November 30, 2005.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 1, 2005:

WAC 232-28-28200A Rocky Mountain bighorn sheep auction or raffle permit.

WSR 05-21-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-244—Filed October 14, 2005, 3:07 p.m., effective October 16, 2005]

Effective Date of Rule: October 16, 2005.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.240.

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: Recent rains and increasing flow has [have] facilitated the upstream migration of chinook and brought an abundance of hatchery coho into this area. Additionally, through the placement of a weir earlier this fall, the Naselle Hatchery is on track to meet its chinook egg take goal. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 13, 2005.

J. P. Koenings
 Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Naselle River. Notwithstanding the provisions of WAC 232-28-619, effective October 16, 2005 through January 31, 2006, it is lawful to fish for and possess salmon and gamefish in those waters of the Naselle River from 200' upstream of the Naselle Salmon Hatchery water supply intake barrier to 400' downstream of the entrance to adult attraction channel. Terminal gear restrictions and daily limits are the same as in the other open waters from the Hwy. 4 Bridge to the Crown Mainline (Salme) Bridge.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2006:

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

WSR 05-21-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-247—Filed October 17, 2005, 4:38 p.m., effective October 18, 2005, 12:01 a.m.]

Effective Date of Rule: October 18, 2005, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-88C-04000F; and amending WAC 220-88C-040.

Statutory Authority for Adoption: RCW 77.12.240.

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: Pacific sardines are managed under a federal harvest guideline and the northern portion of the harvest guideline (pertaining to Washington and Oregon fisheries) has been attained. The Washington experimental pilchard fishery will remain closed for the remainder of the years [year]. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 17, 2005.

J. P. Koenings
 Director

NEW SECTION

WAC 220-88C-04000F Coastal pilchard fishery—Seasons and lawful catch. Notwithstanding the provisions of WAC 220-88C-040, effective 12:01 a.m. October 18, 2005

through November 30, 2005, it is unlawful fish for or possess pilchard.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 1, 2005:

WAC 220-88C-04000F Coastal pilchard fishery—
Seasons and lawful catch.

WSR 05-21-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-248—Filed October 17, 2005, 4:39 p.m., effective October 18,
2005, 8:00 a.m.]

Effective Date of Rule: October 18, 2005, 8:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Allows limited coho directed harvest and sets chinook directed fisheries. The late coho run size is expected to be considerably larger than the preseason forecast, providing for harvestable numbers of fish. ESA impacts on coho will be within the preseason guidelines. Chinook and sturgeon allocations have not been achieved and there remains harvestable numbers of both on the commercial allocation. The season is consistent with the 2005-2007 interim management agreement and the 2005 non-Indian allocation agreement. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. A biological opinion covering Columbia River fisheries was received from NMFS on May 9, 2005. Regulation is consistent with compact action of October 17, 2005. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 17, 2005.

Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-01000S Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. OPEN AREA: SMCRA 1A, 1B, 1C, 1D, 1E

a. SEASON: 8:00 a.m. through 6:00 p.m. October 18, 2005.

8:00 p.m. October 18 through 6:00 a.m. October 20, 2005.

6:00 p.m. October 21 through 6:00 a.m. October 22, 2005.

b. GEAR: Drift gill nets only. No minimum mesh size from 8:00 a.m. October 18 through 6:00 p.m. October 18. 8-inch minimum mesh size effective 8:00 p.m. October 18 through 5:00 a.m. October 22.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The five sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. SANCTUARIES: Elochoman-B, Abernathy, Cowlitz and Kalama-B, Lewis-B, Sandy and Washougal.

e. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. OPEN AREA: Blind Slough/Knappa Slough Select Area. Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are

7:00 p.m. to 7:00 a.m. through September 23 and 6:00 p.m. to 8:00 a.m. thereafter.

b. GEAR: Gillnet - 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The five sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

3. OPEN AREA: Tongue Point/South Channel Select Area. Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, 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. All waters are under concurrent jurisdiction. 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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

b. GEAR: In the Tongue Point area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. In the South Channel area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The five sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

4. OPEN AREA: Deep River Select Area. Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

b. GEAR: The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The five sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

5. OPEN AREA: Steamboat Slough Select Area. Steamboat Slough fishing area includes all waters bounded by markers on Price Island and the Washington shore, at both ends of Steamboat Slough. All open waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 6:00 p.m. to 8:00 a.m.

b. GEAR: The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The five sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. October 18, 2005.

WAC 220-33-01000R Columbia River season
below Bonneville. (05-235)

WSR 05-21-120
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-249—Filed October 18, 2005, 4:59 p.m., effective October 20,
2005, 12:01 a.m.]

Effective Date of Rule: October 20, 2005, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Opportunity for additional chinook harvest is available. Allowable impacts to the ESA listed Snake River wild fall chinook remain on the non-Indian guideline. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 18, 2005.

J. P. Koenings
Director
by Larry Peck

verification techniques recommended by the Washington State Patrol.

Citation of Existing Rules Affected by this Order: Amending WAC 434-379-020.

Statutory Authority for Adoption: RCW 29A.04.611 and 29A.04.530.

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: These new signature verification standards must be in effect for the November 8, 2005, General election. County election staffs have received training on these standards.

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

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

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

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

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

Date Adopted: October 19, 2005.

Steve Excell
Assistant Secretary of State

REPEALER

The following section of the Washington Administration Code is repealed effective 12:01 a.m. October 20, 2005:

WAC 232-28-61900W Exceptions to statewide rules—Columbia River. (05-227)

WSR 05-21-137
EMERGENCY RULES
SECRETARY OF STATE
(Elections Division)

[Filed October 19, 2005, 10:26 a.m., effective October 19, 2005]

Effective Date of Rule: Immediately.

Purpose: Chapter 243, Laws of 2005, states that the Secretary of State is to consult with state and local law enforcement or document examiners to develop guidelines for signature verification processes. The Secretary of State has worked closely with the Washington State Patrol to fulfill this requirement. This rule making implements the signature

AMENDATORY SECTION (Amending WSR 05-12-116, filed 5/31/05, effective 7/1/05)

WAC 434-379-020 Signature verification standard.

A signature on a petition sheet ((with)) must be matched to the signature on file in the voter registration records. ((A signature is considered a match if at least three of the following criteria are met:

- ~~(1) The capital letters match;~~
- ~~(2) Letters tail off alike;~~
- ~~(3) Letter spacing is the same;~~
- ~~(4) The space between the signature and the line is the same;~~
- ~~(5) The beginning and ending of the signature and the slant are consistent;~~
- ~~(6) Unique letters in the signature match;~~
- ~~(7) The overall appearances match.~~

~~In determining whether a signature matches the signature in the registration file, the age of the voter and the date of the signature on the registration file may also be considered.))~~
The following characteristics must be utilized to evaluate signatures to determine whether they are by the same writer:

(1) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

(2) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;

(3) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

(4) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

A single distinctive trait is insufficient to conclude that the signatures are by the same writer. There must be a combination or cluster of shared characteristics. Likewise, there must be a cluster of differences to conclude that the signatures are by different writers.

WSR 05-21-138
EMERGENCY RULES
SECRETARY OF STATE
(Elections Division)

[Filed October 19, 2005, 10:28 a.m., effective November 19, 2005]

Effective Date of Rule: Immediately.

Purpose: To allow for the certification of voting systems in December 2005 in order to comply with legislative mandates that take effect January 1, 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 434-335-040, 434-335-190, and 434-335-600.

Statutory Authority for Adoption: RCW 29A.04.611.

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: These rules must be in place prior to the general election on November 8, 2005.

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

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

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

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

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

Date Adopted: October 19, 2005.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-040 Voting system requirements. (1) No voting device or its component software may be certified by the secretary of state unless it:

- (a) Secures to the voter secrecy in the act of voting;
- (b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (c) ~~((Permits the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;~~

~~((d)))~~ Correctly registers all votes cast for any and all persons and for or against any and all measures;

~~((e)))~~ (d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;

~~((f)))~~ (e) Beginning January 1, 2006, produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; ~~((and))~~

~~((g)))~~ (f) Except for functions or capabilities unique to this state, has been tested and approved by the appropriate independent testing authority approved by the United States election assistance commission; and

(g) For a partisan primary, prevents the counting of votes for candidates of more than one political party.

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct; and

(d) Produces precinct and cumulative totals in printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.

(5) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal independent testing authority and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-190 Restricted period. No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may receive administrative approval or certification between July 15th and (~~December 31st~~) November 30th of the same year.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-600 Parallel monitoring test. Parallel monitoring is conducted on the day of a state primary or election in each county using direct recording electronic voting devices without a voter verified paper record at the poll sites. Before voting begins, one randomly chosen machine must be removed from one percent, rounded up, of the poll sites. Throughout the day, these machines are attended by personnel of the office of the secretary of state, and test votes are cast by individuals selected by the county auditor. The test votes are predetermined in order to compare results at the end of the day. A casting of test votes may be recorded by videotape for verification. All results of the parallel monitoring test are public.

Expires January 1, 2006.

