

**WSR 06-02-001****EMERGENCY RULES****HEALTH CARE AUTHORITY**

(Public Employee Benefits Board)

[Order 05-05—Filed December 21, 2005, 12:19 p.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: The purpose of this emergency rule is to amend WAC 182-12-116 to limit participation in the public employees' benefits board (PEBB) medical flexible spending account (FSA) plan to PEBB-eligible employees of the state board for community and technical colleges, the state four-year institutions of higher education, and the state community and technical colleges. The health care authority (HCA) is not able to expand the FSA plan eligibility to state agency employees or the higher education coordinating (HEC) board until after a new state payroll system has been implemented. This amendment also clarifies that the effective date for the rule's expansion of FSA plan coverage is January 1, 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 182-12-116.

Statutory Authority for Adoption: RCW 41.05.160.

Other Authority: RCW 41.05.123.

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 PEBB medical flexible spending account program cannot be implemented for state agency employees because of state payroll system limitations. Therefore, the rule needs to be amended by emergency rule so the HCA can administer the program in compliance with federal tax code requirements for administration of medical flexible spending accounts.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 21, 2005.

Pete Cutler  
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

**WAC 182-12-116 Who is eligible to participate in the PEBB flexible spending account ((~~program~~)) plan? ((~~State agency employees, including those employed by~~)) Beginning January 1, 2006, all ((~~state~~)) employees of public four-year institutions of higher education ((~~institutions~~)), of state community and technical colleges and of the ((~~higher education coordinating board, and the~~)) state board for community and technical colleges((;)) who are eligible for PEBB insurance benefits, as defined in WAC 182-12-115, are eligible to participate in the PEBB medical flexible spending account ((~~pro-gram~~)) plan.**

**WSR 06-02-011****EMERGENCY RULES****DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-274—Filed December 22, 2005, 4:36 p.m., effective December 28, 2005, 8:00 a.m.]

Effective Date of Rule: December 28, 2005, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600E; and amending WAC 220-52-040 and 220-52-046.

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: Coastal crab will have achieved the mandatory pick rate allowance for opening the season by December 31, 2005. The opening date has been coordinated with Oregon. 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 2, 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: December 21, 2005.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-52-04000R Coastal crab—Barging crab gear.** Notwithstanding the provisions of WAC 220-52-040, it is lawful for a vessel not designated on a Dungeness crab coast fishery license to barge up to 250 pots at any one time for deployment in the coastal crab fishery. All other provisions of the permanent rule remain in effect.

NEW SECTION

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

(1) Crab gear may be set beginning at 8:00 a.m., December 28, 2005.

(2) It is lawful to pull crab gear beginning at 12:01 a.m., December 31, 2005.

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

**Special Area Management (SMA) Restrictions****Makah:**

Close: 12:01 a.m. January 28, 2006/Open: 8:00 a.m. March 29, 2006

The Dungeness crab fishery will be closed beginning January 28, 2006 through March 28, 2006 in the coastal waters between 48°02.15N. to 48°20.00N. and east of a line connecting those points approximating the 25-fathom line. The SMA is described as the marine waters within the following points:

- Northeast Corner; Tatoosh Island
- Northwest Corner; 48°20.00 N. - 124°50.45 W.
- Southwest Corner; 48°02.15 N. - 124°50.45 W.
- Southeast Corner; 48°02.15 N. - 124°41.00 W.

**Quinalt:**

Close: 12:01 a.m. December 31, 2005/Open: March 1, 2006

A **primary SMA** will be established to include the coastal waters shoreward of a line approximating the 25-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00). This area will remain closed until February 28, 2006.

- Northeast Corner: 47°28.00 N. - 124°20.70 W.
- Northwest Corner: 47°28.00 N. - 124°33.00 W.
- Southwest Corner: 47°08.00 N. - 124°23.50 W.
- Southeast Corner: 47°08.00 N. - 124°11.20 W.

Close: 12:01 a.m. March 1, 2006 until further notice.

A **secondary SMA** will be established to include the area shoreward of a line approximating the 25-fathom depth curve between the mouth of the Copalis River and the mouth of the Quinalt River. This area will be closed from the time the primary SMA closure concludes until further notice.

There will be a 100-pot limit in the area shoreward of 25 fathoms from Raft River to Copalis River until further notice and a requirement to pre-register with the Department before fishing in this area.

This SMA will be described as the marine waters within the following points:

**Quinalt Secondary SMA cont.**

- Northeast Corner: 47°21.00 N. - 124°18.00 W.
- Northwest Corner: 47°21.00 N. - 124°29.75 W.
- Southwest Corner: 47°08.00 N. - 124°23.50 W.
- Southeast Corner: 47°08.00 N. - 124°11.20 W.

**Quileute:**

Close: 12:01 a.m. December 31, 2005 until further notice.

The state fishery will be closed until further notice in the area from Cape Johnson to Destruction Island. This SMA will be described as the marine waters within the following points:

- Northeast Corner; Cape Johnson 47°58.00 N - 124°40.40 W.
- Northwest Corner; 47°58.00 N. - 124°49.00 W.
- Southwest Corner; 47°40.50 N. - 124°40.00 W.
- Southeast Corner; Destruction Island 47°40.50 N. - 124°24.43 W.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. December 28, 2005:

WAC 220-52-04600E Coastal crab seasons. (Order 05-266)

**WSR 06-02-012  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-278—Filed December 22, 2005, 4:37 p.m., effective January 1, 2006, 12:01 a.m.]

Effective Date of Rule: January 1, 2006, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350.

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 emergency regulation is needed to reopen the sport clam season at Rendsland Creek. Surveys indicate an increase in the clam population, and a negotiated trade with the Skokomish Tribe has further added to the state's share of clams on this beach. 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: December 16, 2005.

J. P. Koenings  
Director

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: December 21, 2005.

J. P. Koenings  
Director

### NEW SECTION

**WAC 220-56-35000X Clams other than razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

(1) Rendsland Creek: Open January 1, 2006 until further notice.

**WSR 06-02-013  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-281—Filed December 22, 2005, 4:38 p.m., effective December 30, 2005, 12:01 p.m.]

Effective Date of Rule: December 30, 2005, 12:01 p.m.  
Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-56-36000N; 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. 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.

### NEW SECTION

**WAC 220-56-36000N 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. December 30, 2005 through 11:59 p.m. January 1, 2006, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. December 30, 2005 through 11:59 p.m. January 1, 2006, 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. each day only.

3. Effective 12:01 p.m. January 2, 2006 through 11:59 p.m. January 2, 2006, 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. each day 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. January 3, 2006:

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

**WSR 06-02-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-282—Filed December 22, 2005, 4:39 p.m., effective December 31, 2005, 5:00 p.m.]

Effective Date of Rule: December 31, 2005, 5:00 p.m.

Purpose: Amend commercial fishing rules.

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

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 closure complies with state/treaty management agreements to reduce fishing mortality in areas that do not meet the hardshell criteria. 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: December 21, 2005.

J. P. Koenings  
 Director

**NEW SECTION**

**WAC 220-52-04600G Crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046, effective 5:00 p.m. December 31, 2005 until further notice:

1) It will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line from the spiral staircase at Howarth Park due north to the south end of Gedney Island and that portion of 24B east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point (north end of Tulalip Bay).

2) It will be lawful to fish for Dungeness crab for commercial purposes in the following areas:

(a) Effective immediately until further notice, those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A within a line that extends due north from

the green number 1 buoy at Scatchet Head to Scatchet Head, thence from the green number 1 buoy at Scatchet Head to the green number 1 buoy at Possession Point, thence due north from the green number 1 buoy at Possession Point to Possession Point.

(b) Effective immediately until further notice, those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east and north of a line that extends from Possession Point to the green number 1 buoy at Possession Point thence following the 200 foot contour northward to a point due east from the Glendale Dock, thence extending due west to the Whidbey Island shore.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 5:00 p.m. December 31, 2005:

WAC 220-52-04600D      Crab fishery—Seasons and areas. (05-209)

**WSR 06-02-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-283—Filed December 22, 2005, 4:40 p.m., effective January 1, 2006, 12:01]

Effective Date of Rule: January 1, 2006, 12:01.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-27000Y; and amending WAC 220-56-270.

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: A Level 1 fishery was adopted in accordance with the joint states eulachon management plan. Abundance and productivity indicators project a weak return of smelt for 2006. Rule is consistent with WDFW hearing action of December 15, 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: December 22, 2005.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

##### **WAC 220-56-27000Y Smelt—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-275, effective January 1, 2006 through March 31, 2006, it is unlawful to fish for or possess smelt in those waters of the Columbia River and tributaries except under the following provisions:

1) Area: Mainstem Columbia River below Bonneville Dam

Open Dates: 7 days/week

Hours: 24 hours per day

Daily limit: 25 pounds, possession limit 25 pounds

Gear: Dipnets

2) Area: Cowlitz River

Open Dates: Saturdays

Hours: 6:00 a.m. to 10:00 p.m. daily

Daily limit: 10 pounds

Gear: Dipnets

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 1, 2006:

WAC 220-56-27000Y Smelt—Areas and seasons.

**WSR 06-02-016  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-284—Filed December 22, 2005, 4:41 p.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-04000Y; and amending WAC 220-33-040.

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 smelt fishery regulations are consistent with Level 1 fisheries in the Washington and Oregon eulachon management plan for the Columbia River. Abundance and productivity indicators project a weak return

of smelt for 2006. Rule is consistent with Columbia River compact action of December 15, 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: December 22, 2005.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

##### **WAC 220-33-04000Y Smelt—Areas and seasons.**

Notwithstanding the provisions of WAC 220-33-040, effective January 1, 2006 through March 31, 2006, the Columbia River and Washington tributaries are closed to fishing for smelt except under the following provisions:

**1) Area:** Columbia River - SMCRA 1A, 1B, 1C, 1D, and 1E

**Dates:** Mondays and Thursdays, 7:00 a.m. to 4:00 p.m. daily

**Gear:** Gillnets, dipnets and trawl nets.

**Allowable sales:** Smelt.

**Other:** Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

**Miscellaneous:** Notwithstanding the provisions of WAC 220-20-010, during open salmon and/or sturgeon seasons fishers may have stored onboard their boats, while fishing, smelt gill nets; and while smelt fishing, fishers may have stored onboard their boats, gill nets of a size that meets the commercial salmon/sturgeon mesh size, weight, and length restrictions for the open salmon/sturgeon season.

**2) Area:** Cowlitz River downstream of Peterson's Eddy

**Dates:** Sundays and Wednesdays, 6:00 p.m. to midnight

daily

**Gear:** Dipnets.

**Allowable sales:** Smelt.

**Other:** Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 1, 2006:

WAC 220-33-04000Y Smelt—Areas and seasons.

**WSR 06-02-024**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-287—Filed December 23, 2005, 2:13 p.m., effective December 23, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-52-07300W; and amending WAC 220-52-073.

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: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. Prohibition of all diving from licensed sea urchin harvest vessels within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. 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: December 23, 2005.

Evan Jacoby  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-52-07300X Sea urchins** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea

urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1 and 2 are open only on December 26, 2005. The maximum daily landing of green sea urchins allowed in Sea Urchin Districts 1 and 2 is 850 pounds per valid commercial sea urchin harvest license. Sea urchin Districts 3, 4, 6 and 7 are open only on December 26, 27, 28 and 29, 2005. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on December 26 and 27, 2005. Sea Urchin District 4 is open only on December 27 and 28, 2005. In Sea Urchin Districts 1 and 2 it is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of spines). In Sea Urchin District 4 it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red and green sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed in Sea Urchin Districts 1 and 2.

(5) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300W Sea urchins. (05-277)

**WSR 06-02-025**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-286—Filed December 23, 2005, 2:14 p.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900F; and amending WAC 220-56-282 and 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: This rule modifies the minimum size limit for sturgeon for the Columbia River and tributaries below the Wauna powerlines during January-April

2006 and is consistent with decisions of the Columbia River joint state hearing of December 15, 2005. The regulation is consistent with Washington fish and wildlife commission guidance for 2006-2008 sturgeon fishery management and maintains concurrent regulations between Washington and Oregon. 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 2, 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: December 23, 2005.

Evan Jacoby  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-56-28200J Sturgeon—Areas, seasons, limits and unlawful acts.** Notwithstanding the provisions of WAC 220-56-282 and WAC 232-28-619, effective January 1, 2006 until further notice, the minimum size limit for sturgeon retention is 42 inches in the Columbia River and tributaries from the Wauna powerlines downstream to the Columbia River mouth.

#### NEW SECTION

**WAC 232-28-61900F Exceptions to statewide rules—Columbia River (sturgeon).** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. January 1, 2006 through January 31, 2006, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the Wauna powerlines upstream to Bonneville Dam, except on Thursdays, Fridays and Saturdays.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2006:

WAC 232-28-61900F Exceptions to statewide rules—Columbia River (sturgeon)

### WSR 06-02-026 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-285—Filed December 23, 2005, 2:16 p.m., effective December 23, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000T and 220-33-01000U; 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: Sets the winter season sturgeon fishery. Season is consistent with Washington fish and wildlife commission guidance for 2006-2008 sturgeon fishery management. Landings are expected to stay within the harvest guideline of 1,600 fish for this season. Regulation is consistent with compact action of December 15, 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 2.

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

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

Date Adopted: December 23, 2005.

Evan Jacoby  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-33-01000U Columbia River season below Bonneville.** Notwithstanding the provision 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.

AREA: SMCRA 1A, 1B, 1C, 1D, and 1E

SEASON: 6:00 p.m. Tuesday January 10, 2006 to 6:00 p.m. Wednesday, January 11, 2006

6:00 p.m. Tuesday January 17, 2006 to 6:00 p.m. Wednesday, January 18, 2006

6:00 p.m. Tuesday January 24, 2006 to 6:00 p.m. Wednesday, January 25, 2006

6:00 p.m. Tuesday January 31, 2006 to 6:00 p.m. Wednesday, February 1, 2006

6:00 p.m. Tuesday February 7, 2006 to 6:00 p.m. Wednesday, February 8, 2006

6:00 p.m. Tuesday February 14, 2006 to 6:00 p.m. Wednesday, February 15, 2006

6:00 p.m. Tuesday February 21, 2006 to 6:00 p.m. Wednesday, February 22, 2006

GEAR: 9-inch minimum mesh and 9-3/4 inch maximum mesh

ALLOWABLE SALE: Sturgeon and adipose fin-clipped salmon. Green sturgeon maximum size limit is 60 inches.

SANCTUARIES: Sandy River.

OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

MISCELLANEOUS: Notwithstanding the provisions of WAC 220-20-010, during open salmon and/or sturgeon seasons fishers may have stored onboard their boats, while fishing, smelt gill nets; and while smelt fishing, fishers may have stored onboard their boats, gill nets of a size that meets the commercial salmon/sturgeon mesh size, weight, and length restrictions for the open salmon/sturgeon season.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000T Columbia River season below Bonneville. (05-251)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. February 22, 2006:

WAC 220-33-01000U Columbia River season below Bonneville.

**WSR 06-02-027**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 05-279—Filed December 23, 2005, 2:17 p.m., effective March 1, 2006]

Effective Date of Rule: March 1, 2006.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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: Lower than normal numbers of wild steelhead are expected to return to the Hoh River sys-

tem this year. The rule changes being taken will reduce impacts to acceptable levels on the wild run of steelhead. 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: December 23, 2005.

Evan Jacoby  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 232-28-61900E Exceptions to statewide rules—Hoh River and South Fork Hoh River.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. March 1, 2006 until further notice, it is unlawful to violate the following provisions in the following waters:

(1) Hoh River - From the mouth upstream to DNR Oxbow Campground boat launch: wild steelhead release, selective gear rules March 1 through March 31, 2006.

(2) Hoh River - From the mouth upstream to the Olympic National Park boundary below the mouth of the South Fork Hoh River: closed to all fishing April 1, 2006.

(3) South Fork Hoh River - outside Olympic National Park: closed to all fishing April 1, 2006.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 16, 2006:

WAC 232-28-61900E Exceptions to statewide rules—Hoh River and South Fork Hoh.

**WSR 06-02-029**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 05-280—Filed December 28, 2005, 2:46 p.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: Amend commercial fishing rules.



Citation of Existing Rules Affected by this Order:  
Amending WAC 220-88E-030.

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 fishery is experimental in nature and information to date indicates that bycatch is not an issue and that stocks are plentiful. A more liberal pot limit can be supplied to fishers to enhance their harvest 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 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: December 27, 2005.

Ronald McQueen  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-88E-03000B Hagfish pot trial fishery—Season and gear.** Notwithstanding the provisions of WAC 220-88D-030, effective January 1, 2006 until further notice, it is lawful to use a maximum of 100 hagfish pots per permit. Pots may be fished individually or on a common ground line.

**WSR 06-02-030  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-288—Filed December 28, 2005, 2:47 p.m., effective December 28, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-52-04000R; 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: Bad weather is expected to impede the setting of crab gear for the commercial season. 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: December 28, 2005.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-52-04000S Coastal crab—Barging crab gear.** Notwithstanding the provisions of WAC 220-52-040:

(1) It is lawful for a vessel not designated on a Dungeness crab coast fishery license to barge up to 250 pots at any one time for deployment in the coastal crab fishery.

(2) Such a vessel may deploy shellfish pot gear only during the 64 hour-period immediately preceding the season opening date and during the 168-hour period immediately following the season opening date.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000R Coastal crab—Barging crab gear.

**WSR 06-02-031  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-289—Filed December 28, 2005, 2:48 p.m., effective December 28, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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: Coastal crab will have achieved the mandatory pick rate allowance for opening the season by December 31, 2005. The opening date has been coordinated with Oregon. 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: December 28, 2005.

J. P. Koenings  
Director

### NEW SECTION

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

(1) Crab gear may be set beginning at 8:00 a.m., December 28, 2005.

(2) It is lawful to pull crab gear beginning at 12:01 a.m., December 31, 2005.

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

### Special Area Management (SMA) Restrictions

#### **Makah:**

Close: 12:01 a.m. January 28, 2006/Open: 8:00 a.m. March 29, 2006

The Dungeness crab fishery will be closed beginning January 28, 2006 through March 28, 2006 in the coastal waters between 48°02.15N. to 48°20.00N. and east of a line connecting those points approximating the 25-fathom line. The SMA is described as the marine waters within the following points:

- Northeast Corner; Tatoosh Island
- Northwest Corner; 48°20.00 N. - 124°50.45 W.
- Southwest Corner; 48°02.15 N. - 124°50.45 W.
- Southeast Corner, 48°02.15 N. - 124°41.00 W.

#### **Quinalt:**

Close: 12:01 a.m. December 31, 2005/Open: March 1, 2006

A **primary SMA** will be established to include the coastal waters shoreward of a line approximating the 25-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00). This area will remain closed until February 28, 2006.

- Northeast Corner: 47°28.00 N. - 124°20.70 W.
- Northwest Corner: 47°28.00 N. - 124°33.00 W.
- Southwest Corner: 47°08.00 N. - 124°23.50 W.
- Southeast Corner: 47°08.00 N. - 124°11.20 W.

Close: 12:01 a.m. March 1, 2006 until further notice.

A **secondary SMA** will be established to include the area shoreward of a line approximating the 25-fathom depth curve between the mouth of the Copalis River and the mouth of the Quinalt River. This area will be closed from the time the primary SMA closure concludes until further notice.

There will be a 100-pot limit in the area shoreward of 25 fathoms from Raft River to Copalis River until further notice and a requirement to pre-register with the Department before fishing in this area.

This SMA will be described as the marine waters within the following points:

#### **Quinalt Secondary SMA cont.**

- Northeast Corner: 47°21.00 N. - 124°18.00 W.
- Northwest Corner: 47°21.00 N. - 124°29.75 W.
- Southwest Corner: 47°08.00 N. - 124°23.50 W.
- Southeast Corner: 47°08.00 N. - 124°11.20 W.

#### **Quileute:**

Close: 12:01 a.m. December 31, 2005 until further notice.

The state fishery will be closed until further notice in the area from Sand Point to Destruction Island. This SMA will be described as the marine waters within the following points:

- Northeast Corner; Sand Point 48°07.00 N - 124°42.00 W.
- Northwest Corner; 48°07.00 N. - 125°44.00 W.
- Southwest Corner; 47°40.50 N. - 125°44.00 W.
- Southeast Corner; Destruction Island 47°40.50 N. - 124°24.43 W.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600F Coastal crab seasons. (Order 05-274)

**WSR 06-02-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed December 28, 2005, 4:51 p.m., effective December 28, 2005]

Effective Date of Rule: Immediately.

Purpose: The division of child support (DCS) seeks to clarify its rules regarding when a claim for child support starts as a result of the family receiving Medicaid or medical-only assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-2005, 388-14A-2025, 388-14A-2035, 388-14A-2036, 388-14A-2040, and 388-14A-3350.

Statutory Authority for Adoption: RCW 74.20A.310.

Other Authority: 45 C.F.R. 302.31, 45 C.F.R. 302.33.

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 filing is necessary to bridge the gap between the expiration of the emergency rule-making order filed as WSR 05-18-034 and the effective date of the rule-making order which will be filed after the rule-making hearing set for December 6, 2005, under WSR 05-21-103.

DCS' federal funding depends on compliance with the state plan under Title IV-D of the Social Security Act, which requires that the state have in place procedures and laws regarding opening a full support enforcement services case when a family begins to receive Medicaid assistance. It has come to our attention that our WAC does not specifically cover these cases and is subject to an interpretation which would make it impossible for DCS to base a claim for support on the opening of a Medicaid case. DCS seeks to clear up any confusion in the rule.

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

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

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

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

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

Date Adopted: December 23, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-03 issue of the Register.

**WSR 06-02-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed December 29, 2005, 9:56 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: These rules are necessary to implement ESSB 6090, section 205 (1)(e), 2005-2007 conference budget (chapter 518, Laws of 2005), which establishes a flexible family support pilot program for families who are providing care and support for family members with developmental disabilities. The family support pilot program is funded through June 30, 2007. The division of developmental disabilities (DDD) determined that new sections of chapter 388-825 WAC are necessary to implement the legislature's directive in ESSB 6090.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Other Authority: Section 205 (1)(e), chapter 518, Laws of 2005, Title 71A 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: Emergency rules are needed to implement the legislature's directive in section 205 (1)(e), chapter 518, Laws of 2005, as soon as possible in fiscal year 2006 to preserve and improve the welfare of families of persons with developmental disabilities by providing family support pilot program services. The department is adopting these emergency rules as permanent. A proposed rule (CR-102) has been filed as WSR 05-24-090 on December 6, 2005, and the hearing is scheduled for January 10, 2006. We expect the permanent rules to be adopted by March 1, 2006.

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 33, 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 33, Amended 0, Repealed 0.

Date Adopted: December 27, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

NEW SECTION**WAC 388-825-500 What is the family support pilot?**

(1) The Family Support Pilot (FSP) is a new state-only program funded by the legislature to provide services in a new program through June 2007.

(2) The purpose of the Family Support Pilot is to provide paid services in a flexible manner to eligible DDD clients.

NEW SECTION

**WAC 388-825-505 What is the statutory authority for the family support pilot?** The legislature directed DDD to implement the Family Support Pilot in the 2005-2007 conference budget, chapter 518, Laws of 2005 Section 205 (1)(e).

NEW SECTION

**WAC 388-825-510 Who is eligible to participate in the family support pilot?** To be eligible to participate in the Family Support Pilot (FSP), you must meet all of the following criteria:

- (1) Be a client of DDD.
  - (a) Your eligibility must be current.
  - (b) WAC 388-823-1010 may require a review of your eligibility prior to any approval of paid services.
- (2) Be in DDD's current database as having requested FSP.
- (3) Live with family as defined in WAC 388-825-512.
- (4) Not be receiving any other DDD paid services as defined in WAC 388-825-516.
- (5) Have been determined ineligible for Medicaid Personal Care (MPC).
- (6) Have a gross household annual income of less than or equal to 400% of federal poverty level (FPL).
- (7) Have completed a mini-assessment per chapter 388-824 WAC.

NEW SECTION**WAC 388-825-512 What is the definition of family?**

Family means relatives who live in the same home with the eligible client. Relatives include parents, grandparents, brother, sister, step-parent, step-brother, step-sister, uncle, aunt, first cousin, niece or nephew.

NEW SECTION

**WAC 388-825-513 What is the definition of an "award"?** (1) An award is the dollar amount of services performed by a provider for an eligible client.

- (2) The award will be paid directly to the provider.

NEW SECTION

**WAC 388-825-514 If I participate in the FSP, will I be eligible for services through the DDD home and community based services (HCBS) waiver?** You may request to be served in the DDD HCBS waiver per WAC 388-845-0050 but waiver enrollment is limited by waiver capacity and fund-

ing. Participation in the FSP will not affect your potential waiver eligibility.

NEW SECTION

**WAC 388-825-516 If I receive other DDD funded services do I qualify for the FSP?** You do not qualify for the FSP if any of the following apply:

- (1) You receive other DDD funded services identified in WAC 388-823-1015, including services through the DDD HCBS waiver per WAC 388-845-0050;
- (2) You are eligible for Medicaid Personal Care;
- (3) You receive the State Supplementary Payment administered by DDD; or
- (4) You are under age three. (All children under age three receive or are eligible to receive services through the Infant Toddler Early Intervention Program and/or child development services through DDD.)

NEW SECTION

**WAC 388-825-520 If I qualify for and receive an FSP award, will my name remain on the family support waitlist?** Participation in the FSP does not remove your name from the family support waitlist.

NEW SECTION

**WAC 388-825-524 How do I apply for the FSP?** You may apply for the FSP by completing and returning an FSP questionnaire that DDD will send to individuals and families who are on the family support waitlist as of August 1, 2005.

NEW SECTION

**WAC 388-825-528 What will DDD do with the FSP questionnaire that you return?** When you return the FSP questionnaire, DDD will determine your eligibility according to the criteria contained in WAC 388-825-510 and notify you of its decision according to WAC 388-825-588.

NEW SECTION

**WAC 388-825-532 How does DDD determine the federal poverty level (FPL) for my household?** DDD determines the federal poverty level (FPL) for your household by asking you for your gross annual household income and the number of people living in your household.

- (1) DDD cannot determine your financial eligibility for FSP without this information.
- (2) If you do not provide this information, you will not be eligible for FSP services.

NEW SECTION

**WAC 388-825-534 What are the annual federal poverty levels?** (1) The annual 2005 federal poverty levels (FPL) based on household size established by the federal Office of Management and Budget are:

Household Size	100% FPL	200% FPL	300% FPL	400% FPL
One	\$9,570	\$19,140	\$28,710	\$38,280
Two	\$12,830	\$25,660	\$38,490	\$51,320
Three	\$16,090	\$32,180	\$48,270	\$64,360
Four	\$19,350	\$38,700	\$58,050	\$77,400
Five	\$22,610	\$45,220	\$67,830	\$90,440
Six	\$25,870	\$51,740	\$77,610	\$103,480
Seven	\$29,130	\$58,260	\$87,390	\$116,520
Eight	\$32,390	\$64,780	\$97,170	\$129,560
Nine	\$35,650	\$71,300	\$106,950	\$142,600
Ten	\$38,910	\$77,820	\$116,730	\$155,640

For each household member over ten, add the following amounts to the ten-person standard:

100% FPL	200% FPL	300% FPL	400% FPL
\$3,260	\$6,520	\$9,780	\$13,040

(2) The FPL is updated each year in April.

**NEW SECTION**

**WAC 388-825-536 What is "gross annual household income"?** Gross annual household income means total unearned and earned income prior to any deductions or taxes for the past calendar year.

- (1) Ownership of income is defined in WAC 388-450-0005.
- (2) Income that is not counted is defined in WAC 388-450-0015.
- (3) Unearned income is defined in WAC 388-450-0025.
- (4) Earned income is defined in WAC 388-450-0030.

**NEW SECTION**

**WAC 388-825-538 What is the definition of household?** For the purpose of determining household size and gross annual household income, the definition of household follows:

- (1) If you are under age eighteen, your household includes:
  - (a) You;
  - (b) Your full, half, step or adoptive siblings under age eighteen living with you; and
  - (c) Your natural or adoptive parent(s) or stepparent(s) living with you.
- (2) If you are age eighteen or older, your household includes only you.

**NEW SECTION**

**WAC 388-825-540 Who must declare their income?** If you are a child under age of eighteen at the time you are declaring income, your custodial, natural/step/adoptive parent(s) or guardian(s) must declare income.

- (2) If you are age eighteen or older, you are the only household member to declare income. You must report all unearned and earned income.
- (3) Income is subject to verification upon department request.

**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 388-825-544 If I meet eligibility for FSP, will I receive paid services?** You will have access to an amount of paid services called an "FSP Award" if:

- (1) You are determined eligible by DDD to participate in FSP;
- (2) You meet one of the priority groups in WAC 388-825-554; and
- (3) There is funding available.

**NEW SECTION**

**WAC 388-825-548 What is the amount of the FSP awards?** FSP Awards are based on your gross household income and the annual Federal Poverty Level (FPL) based on your household size and income.

Amount of Annual Income	Amount of Award
Equal to or less than 100% FPL	Up to \$4,000 per year
Greater than 100% but equal to or less than 200% FPL	Up to \$3,000 per year
Greater than 200% but equal to or less than 300% FPL	Up to \$2,000 per year
Greater than 300% but equal to or less than 400% FPL	Up to \$1,000 per year

**NEW SECTION**

**WAC 388-825-552 What if there are two or more family members who qualify for FSP?** Each family member who is eligible will be considered for an award.

**NEW SECTION**

**WAC 388-825-554 How will DDD determine who will receive awards for FSP?** Within the availability of staff time, DDD will distribute the awards to eligible FSP clients in order of the following priorities:

- (1) Client or caregiver with health and safety needs that places the client at immediate risk of out-of-home placement in a nursing facility or ICF/MR.
- (2) Clients living in single parent households;
- (3) Clients with multiple disabilities; and
- (4) Clients who are at least twenty-one years old and graduated from high school who need employment services.

**NEW SECTION**

**WAC 388-825-558 What FSP services can my family and I receive?** You and your family can use your FSP Award to pay for any of the following services identified and agreed to in your FSP service plan with DDD:

- (1) Respite care which is intermittent relief to your caregiver.

(a) Respite care may be provided in your home or the home of a relative or licensed provider, or community setting/activity contracted for respite care.

(b) The respite provider must be a qualified individual or agency per WAC 388-825-300 through WAC 388-825-400.

(c) Respite care may be provided by a registered or licensed nurse if you require a licensed health professional as determined by DDD.

(2) Training and consultation for you or your family, including:

(a) Counseling related to your disability or genetic counseling.

(b) Parenting classes and disability related support groups.

(c) Behavior management/counseling.

(3) Assistive technologies or specialized or adaptive equipment related to your development disability:

(a) Mobility devices such as walkers and wheelchairs are included, as well as communication devices and medical supplies such as diapers for children three years of age or older.

(b) Professional justifications may be required by the department.

(4) Employment services for those clients twenty-one years of age and older. See chapter 388-850 WAC.

(5) Extraordinary household expenses resulting from the client's developmental disability such as a portion of the power bill for a ventilator dependent client.

(a) The expense is limited to the total cost divided by the total number of persons living in the family.

(b) This will not include the purchase of any appliances, furniture, or floor coverings.

#### NEW SECTION

**WAC 388-825-560 What department restrictions apply to FSP?** The following department restrictions apply to FSP:

(1) FSP services are authorized only after you have accessed what is available to you under Medicaid, and any other private health insurance plan, school or child development services.

(2) All FSP service payments must be agreed to by DDD and the client in a written service plan.

(3) The department will contract directly with providers. FSP funding cannot be authorized for services or treatments determined by the department to be experimental.

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

(5) Respite care cannot be a replacement for child care while the parent or guardian is at work regardless of the age of the child.

(6) The department shall not authorize a birth parent, adoptive parent, step-parent or any other primary caregiver or their spouse living in the same household with the client to provide respite, nursing, therapy or counseling services.

(7) FSP will not pay for conference registrations.

(8) FSP will not pay for behavior management/counseling procedures, modifications, or equipment that are restrictive.

(9) FSP will not pay for services provided after the death of the eligible client. Payment may occur after the date of death, but not the service.

(10) FSP will not pay for employment services if you are under age twenty-one or are designated to receive DDD funded transition services.

#### NEW SECTION

**WAC 388-825-562 What is an FSP plan?** (1) An FSP plan is a written plan you develop with your DDD case resource manager that identifies the services you will purchase with your FSP Award.

(2) The FSP plan will last for up to twelve months, but cannot extend beyond June 30, 2007.

(3) The department has the final approval over service authorization.

#### NEW SECTION

**WAC 388-825-564 Does my family have a choice of FSP services?** The individual and family identify and choose FSP services per WAC 388-825-558 through the department's assessment and planning process. Adult clients are included in the choice of FSP services.

#### NEW SECTION

**WAC 388-825-572 What if I have needs that exceed my FSP award limit?** If you have needs that exceed your FSP award limit, DDD may approve additional funding to meet certain extraordinary needs as "one-time award". This approval is an exception to your award limit and you cannot appeal the amount of the exception or denial of an exception.

#### NEW SECTION

**WAC 388-825-575 What are one-time awards?** A one-time award is limited to extraordinary support for individuals receiving FSP funding.

(1) The one-time award can only be approved for the following services performed by a DDD contracted provider:

(a) Respite care; and/or

(b) Behavior management/counseling.

(2) A one-time award may be approved only once during the period of time covered by your FSP plan.

(3) Providers of the services in subsection (1) of this section must be contracted with and paid directly by DDD.

#### NEW SECTION

**WAC 388-825-576 How do I apply for a one-time award?** You may apply for a one-time award by following the procedures contained in WAC 388-825-236.

#### NEW SECTION

**WAC 388-825-578 What amount of one-time funding is available for my family?** The maximum amount of one-time funding available for respite care and/or behavior

management/counseling is the same as the amount of your award, determined by WAC 388-825-548.

#### NEW SECTION

**WAC 388-825-581 How long do I remain eligible for the FSP?** (1) If you are approved for an FSP award, your FSP plan will be reviewed annually for continued funding as long as FSP funding is available.

(2) The Family Support Pilot ends June 30, 2007.

#### NEW SECTION

**WAC 388-825-584 Can I be terminated from FSP?** You will be terminated from FSP if any of the following occur:

- (1) Your DDD eligibility is terminated per chapter 388-823 WAC;
  - (2) You no longer live with a family as defined in WAC 388-825-512;
  - (3) You begin living independently or with a spouse;
  - (4) You begin to receive other DDD funded services;
  - (5) Your household income exceeds 400% of the FPL;
  - (6) You become eligible for Medicaid Personal Care;
- and or
- (7) FSP funding is no longer available.

#### NEW SECTION

**WAC 388-825-586 When are changes in my circumstances considered effective?** (1) Except for changes in income and/or household size, changes are effective immediately.

(2) Changes in gross annual household income and changes in household size are effective at the time your FSP plan is reviewed.

#### NEW SECTION

**WAC 388-825-588 How will the department notify me of their decisions?** The department will provide written notification to you and your legal representative of all eligibility and service decisions per WAC 388-825-100 through WAC 388-825-105. These notices will include your appeal rights.

#### NEW SECTION

**WAC 388-825-591 What are my appeal rights under the FSP?** You have appeal rights under WAC 388-825-120 to the following decisions:

- (1) Denial of eligibility to participate in the FSP per WAC 388-825-510.
- (2) A denial, reduction or termination of FSP services.
- (3) A denial or termination of your choice of a qualified provider.

#### NEW SECTION

**WAC 388-825-595 How do I appeal a department action?** Your appeal rights and procedures to appeal a depart-

ment decision are in WAC 388-825-120 through WAC 388-825-165.

#### **WSR 06-02-043**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed December 29, 2005, 9:58 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: The department is amending this rule to incorporate the January 1, 2006, federal increase in the community spouse resource share standard to \$99,540, and to continue the change previously adopted as an emergency rule on October 27, 2005, under WSR 05-22-042, increasing the spousal resource maximum from \$41,000 to \$41,943.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530.

Other Authority: Section 1924 of the Social Security Act (42 U.S.C. 1396r-5).

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

Reasons for this Finding: Implementation of the January 1, 2006, federal institutional Medicaid standard change is required to ensure the continued receipt of federal funds under 42 U.S.C., chapter 7. RCW 74.09.575(3) requires the department to increase the allowable resource maximum for the spouse or an institutionalized Medicaid-eligible individual every biennium. This emergency rule is necessary while the permanent rule-making process initiated under WSR 05-13-139 on June 20, 2005, is completed.

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

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

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

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

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

Date Adopted: December 23, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

**WAC 388-513-1350 Defining the maximum amount of resources allowed and determining resources availability for long-term care (LTC) services.** This section describes how the department defines the resource standard and available resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

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

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (5) through (8); or

(b) Three thousand dollars for a legally married couple, unless subsection (2) applies.

(2) If the department has already established eligibility for one spouse, then it applies the standard described in subsection (1)(a) to each spouse, unless doing so would make one of the spouses ineligible.

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

(a) WAC 388-475-0300, Resource eligibility and limits;

(b) WAC 388-475-0250, How to determine who owns a resource;

(c) WAC 388-470-0060(6), Resources of an alien's sponsor; and

(d) WAC 388-506-0620, SSI-related medical clients.

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

(a) For an SSI-related client, the department reduces available resources by excluding resources described in WAC 388-475-0350 through 388-475-0550;

(b) For an SSI-related client who has a community spouse, the department:

(i) Excludes resources described in WAC 388-513-1360; and

(ii) Adds together the available resources of both spouses according to subsection (5)(a) or (b) as appropriate;

(c) For a client not described in subsection (4)(a) or (b), the department applies the resource rules of the program used to relate the client to medical eligibility.

(5) The department determines available resources of a legally married client, when both spouses are institutionalized, by following WAC 388-506-0620 (5) and (6). For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

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

(i) The institutionalized spouse; or

(ii) Both spouses.

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

(i) Either spouse; or

(ii) Both spouses.

(6) If subsection (5)(b) applies, the department determines the amount of resources that are allocated to the community spouse before determining nonexcluded resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ~~((ninety-five))~~ ninety-nine thousand ~~((one))~~ five hundred forty dollars effective January 1, ~~((2005))~~ 2006; or

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

(i) A spousal share equal to one-half of the couple's combined nonexcluded resources as of the beginning of the current period of institutional status, up to the amount described in subsection (6)(a); or

(ii) The state spousal resource standard of ~~((forty thousand))~~ forty-one thousand, nine-hundred forty-three dollars effective July 1, 2005.

(7) The amount of the spousal share described in (6)(b)(i) is determined sometime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

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

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

(8) The amount of allocated resources described in subsection (6) can be increased, only if:

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

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

(9) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (10)(a), (b), or (c) applies.

(10) A redetermination of the couple's resources as described in subsections (4)(b) or (c) is required, if:

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



(b) The institutionalized spouse's nonexcluded resources exceed the standard described in subsection (1)(a), if subsection (5)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (6) or (8) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

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

#### WSR 06-02-044

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 29, 2005, 9:59 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: The department is amending these rules to increase the community spouse maintenance allowance to \$2,489 due to January 1, 2006, federal standard change, and to continue the changes previously adopted as an emergency rule on October 27, 2005, under WSR 05-22-039, changing the personal needs allowance allowed in a medical facility for nongeneral assistance (GA) clients to \$51.62 per month effective July 1, 2005. This filing also continues the April 1, 2005, changes to the community spouse income and family standard (\$1604) and the community spouse excess shelter standard (\$481).

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1380.

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

Other Authority: Section 1924 of the Social Security Act (42 U.S.C. 1396r-5).

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

Reasons for this Finding: Implementation of the January 1, 2006, federal Institutional Medicaid standard change is required to ensure the continued receipt of federal funds under 42 U.S.C., chapter 7. This rule also implements the legislative mandate (2005 supplemental budget, section 207, chapter 518, Laws of 2005) to increase the personal needs allowance for institutional medical clients. Continuing the April 1, 2005, federal changes to the Institutional Medicaid standard and community spouse income and family allocation and excess shelter standard is required to ensure the continued receipt of federal funds under 42 U.S.C. chapter 7. This emergency rule is necessary while the permanent rule-making process initiated under WSR 05-13-138 is completed. Proposed rules have been filed as WSR 06-01-044 and a public hearing will be held on January 24, 2006.

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

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

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

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

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

Date Adopted: December 20, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

**WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services.** This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical ~~((facility))~~ institution, the department applies all subsections of this rule.

(2) For a client receiving ~~((waivered))~~ waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL), if the client is not otherwise eligible for another noninstitutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) Excess resources are reduced in an amount equal to ~~((incurred))~~ medical expenses incurred by the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

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

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income (~~up to a total of the medically needy income level (MNIL))~~ in the following order and the combined total of (5)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives ~~((a))~~ the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all ~~((other))~~ clients in a medical ~~((facility))~~ institution receiving general assistance.

(iv) Effective July 1, 2005, fifty-one dollars and sixty-two cents for all other clients in a medical institution.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnisheed for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, ~~((2005)) 2006~~, two thousand ~~((three))~~ four hundred ~~((seventy-eight))~~ eighty-nine dollars, unless a greater amount is allocated as described in subsection (8) of this section. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand ~~((five))~~ six hundred ~~((sixty-two))~~ four dollars, effective April 1, 2005; and

(B) Excess shelter expenses as ~~((specified))~~ described under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized ~~((spouse))~~ person who:

(i) Resides with the community spouse~~(s)~~;

(A) In an amount equal to one-third of ~~((the amount that))~~ one thousand ~~((five))~~ six hundred ~~((sixty-two))~~ four

dollars ~~((exceeds))~~ less the dependent family member's income; and

(B) Is effective April 1, 2005.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less ~~((the income of))~~ the dependent family ~~((members))~~ member's income.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources with the following exceptions:

(i) Private health insurance premiums for Medicare/Medicaid integration project (MMIP); and

(ii) Managed care health insurance premiums for program of all-inclusive care for the elderly (PACE).

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption ~~((and reviews the client's circumstances after ninety days)).~~

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred ~~((sixty-nine))~~ eighty-one dollars, effective April 1, ~~((2004))~~ 2005; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

**WSR 06-02-045**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed December 29, 2005, 10:00 a.m., effective January 1, 2006]

Effective Date of Rule: January 1, 2006.

Purpose: To increase the categorically needy income level (CNIL) supplemental security income-related standards and the medically needy one-person standard based on a change in federal standards effective January 1, 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0070 and 388-478-0080.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Other Authority: Section 1924 of the Social Security Act (42 U.S.C. 1396r-5).

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

Reasons for this Finding: Implementation of the federal increase in standards is required to be effective January 1, 2006, in order to continue receiving federal funds. This emergency rule is necessary while the permanent rule-making process initiated under WSR 05-22-097 on November 1, 2005, is completed.

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

Date Adopted: December 23, 2005.

Andy Fernando, Manager  
 Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 05-06-090, filed 3/1/05, effective 4/1/05)

**WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN).** (1) Beginning January 1, (~~2005~~) 2006, the medically needy income level (MNIL) is:

- (a) One person \$((~~579.00~~)) 603
- (b) Two persons \$((~~592~~)) 603
- (c) Three persons \$667
- (d) Four persons \$742

- (e) Five persons \$858
- (f) Six persons \$975
- (g) Seven persons \$1,125
- (h) Eight persons \$1,242
- (i) Nine persons \$1,358
- (j) Ten persons and more \$1,483

(2) The MNIL standard for a person who meets institutional status requirements is in WAC 388-513-1305(3).

(3) Countable resource standards for the MN program is:

- (a) One person \$2,000
- (b) Two persons \$3,000
- (c) For each additional family member add \$50

**AMENDATORY SECTION** (Amending WSR 05-06-090, filed 3/1/05, effective 4/1/05)

**WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards.** (1) The SSI payment standards, also known as the federal benefit rate (FBR), beginning January 1, (~~2005~~) 2006 are:

(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)

- Individual \$((~~579~~)) 603
- Individual with an ineligible spouse \$((~~579~~)) 603
- Couple \$((~~869~~)) 904

(b) Shared living (in the home of another)

- Individual \$((~~386~~)) 402
- Individual with an ineligible spouse \$((~~386~~)) 402
- Couple \$((~~579~~)) 603

(c) Living in an institution

- Individual \$30

(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) The SSI-related CNIL standards are:

- (a) Single person \$((~~579.00~~)) 603
- (b) Married couple - both eligible \$((~~869.00~~)) 904
- (c) Supplied shelter - single person \$((~~386.00~~)) 402
- (d) Supplied shelter couple - both eligible \$((~~579.00~~)) 603

(4) The countable resource standards for SSI and SSI-related CN medical programs are:

- (a) One person \$2,000
- (b) A legally married couple \$3,000

**WSR 06-02-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-290—Filed December 30, 2005, 2:18 p.m., effective December 30, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300X; and amending WAC 220-52-073.

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: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. Prohibition of all diving from licensed sea urchin harvest vessels within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. 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: December 29, 2005.

Ronald McQueen  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-52-07300Y Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective December 30, 2005 until further notice, it is unlawful to take or possess sea

urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea urchin Districts 3, 4, 6 and 7 are open only on January 2, 3, 4 and 5, 2006. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins:

(a) Sea Urchin Districts 1 and 2 are open only on January 2 and 3, 2006. In Sea Urchin Districts 1 and 2 it is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of spines).

(b) Sea Urchin District 4 is open only on January 2, 2006. Sea urchin District 4 is also open on January 3, 2006 with a maximum daily landing of 1,000 pounds per valid commercial sea urchin harvest license. In Sea Urchin District 4 it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red and green sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed in Sea Urchin Districts 1 and 2.

(5) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300X      Sea urchins. (05-287)

**WSR 06-02-093**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-01—Filed January 4, 2006, 11:26 a.m., effective January 4, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-380.

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 emergency regulation is needed to open the sport oyster season year-round at Sequim Bay State Park, and to protect the oyster resource at Cushman Park. The oyster population at Sequim Bay is entirely due to enhancement efforts and can sustain a year-round sport fish-

ery. Surveys at Cushman Park indicate that the oyster population will support only a limited season in 2006. 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: January 4, 2006.

J. P. Koenings  
Director

#### NEW SECTION

##### **WAC 220-56-38000J Oysters—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Sequim Bay State Park: Open until further notice.
- (2) Cushman Park: Closed through April 30.