

**WSR 06-07-002**  
**EMERGENCY RULES**  
**ENVIRONMENTAL HEARINGS OFFICE**

[Filed March 2, 2006, 10:02 a.m., effective March 2, 2006]

Effective Date of Rule: Immediately.

Purpose: The 2004 legislature passed SSB 5590, amending chapter 43.21B RCW (chapter 204, Laws of 2004). The legislation modified the basis for calculating the time period for appeals to the pollution control hearings board. The environmental hearings office (EHO) previously adopted a rule amendment to conform its rules to the legislation, but did not include one rule subsection that also needed to be amended.

Citation of Existing Rules Affected by this Order: Amending WAC 371-08-555.

Statutory Authority for Adoption: RCW 43.21B.170 (PCHB rule-making authority); chapter 34.05 RCW.

Other Authority: RCW 43.21B.001, [43.21B].190, [43.21B].230, [43.21B].300, [43.21B].310 (sections amended by SSB 5590).

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: See Purpose above. The EHO is currently in the process of adopting this emergency rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 1, 2006.

William H. Lynch  
 Director

AMENDATORY SECTION (Amending WSR 97-19-064, filed 9/15/97, effective 10/16/97)

**WAC 371-08-555 Time for filing petitions for review to superior court.** An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within thirty days of the date ~~((that the board issues its))~~ of receipt of the final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

**WSR 06-07-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-33—Filed March 2, 2006, 10:29 a.m., effective March 2, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000W and 220-33-01000X; 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 second winter salmon directed fishing period. Season is consistent with the 2006 commercial salmon fishing plan. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26 and March 1, 2006, and conforms Washington and Oregon state rules. The select area fisheries (SAFE) in Deep River and Blind Sough/Knappa Slough are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. The increased time (Deep River) and area (Knappa Slough) for the winter/spring of 2006 will allow for additional opportunity to harvest salmon originating from the select areas. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26, 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 2.

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

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

Date Adopted: March 1, 2006.

J. P. Koenings  
 Director  
 by Larry Peck

NEW SECTION

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

1. Area: SMCRA 1A, 1B, 1C, and 1D upstream to Kelley Point.

a) Season: 12:00 p.m. (noon) March 2 through 12:00 p.m. March 3, 2006.

b) Gear: Drift gill nets only. 8-inch minimum and 9 3/4 inch maximum mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required. Net length not to exceed 150 fathoms.

c) Allowable Sale: Adipose fin-clipped salmon, sturgeon, and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Elokomin-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B.

e) Miscellaneous Regulations:

i. Quick reporting is in effect for Washington wholesale dealers, WAC 220-69-240.

ii. At least one fisher on each boat must have Columbia River tangle net certification.

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

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

v. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

vi. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and the least possible injury to the fish or placed into an operating recovery box. Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

vii. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with Department observers or observers collecting data for the Department, when notified by the observer of their intent to board the commercial vessel for observation and sampling during an open fishery.

viii. Columbia River tangle net certification: Any individual meeting the qualifications of RCW 77.65.040(2) and obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

ix. Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If WDFW authorizes a tangle net fishery in any other time, WDFW may establish qualifications and requirements that are different from those established for 2006. In particular, WDFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

#### 2. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

b) Dates:

Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays and 7:00 p.m. Sunday to 7:00 a.m. Mondays immediately through March 13, 2006

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 until June 16, 2006.

Only Blind Slough is open through March 13. After March 13, both Blind Slough and Knappa Slough are open.

During May 1 through June 16, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 7-inch minimum mesh through March 13 and 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length with no weight restriction on headline. Use of additional weights or anchors attached directly to the headline is allowed.

d) Allowable Sales: Salmon, sturgeon, shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

3. Deep River Select Area

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

b) Dates:

Winter season: 6:00 p.m. Mondays to 8:00 a.m. Tuesdays immediately through March 14, 2006

Spring season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 through June 16, 2006

c) Gear: 7-inch maximum mesh size through March 14, 8" maximum thereafter. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, sturgeon and shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful. An exception to the rule would allow fishers to transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

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 sections of the Washington Administrative Code are repealed:

- WAC 220-33-01000W Columbia River seasons below Bonneville. (06-26)
WAC 220-33-01000X Columbia River seasons below Bonneville. (06-31)

WSR 06-07-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-34—Filed March 3, 2006, 10:46 a.m., effective March 18, 2006, 12:01 a.m.]

Effective Date of Rule: March 18, 2006, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23000E; and amending WAC 220-56-230.

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: Yelloweye rockfish are one of seven overfished groundfish stocks, which are managed under rebuilding plans by the Pacific fishery management council. The Pacific council has adopted harvest guidelines for yelloweye rockfish for state recreational fisheries to ensure that rebuilding goals are met. Management measures to achieve these rebuilding goals include prohibiting the retention of yelloweye rockfish in recreational fisheries to encourage conservation of the stock and discourage targeting by anglers. 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: March 2, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-56-23000E Bottomfish closed areas. Notwithstanding the provisions of WAC 220-56-230, WAC 220-56-235 and WAC 220-56-250, effective 12:01 a.m. March 18 through June 15, 2006, in Marine Catch Area 2, it is unlawful to fish for or possess rockfish and lingcod for personal use seaward of a line approximating the 30-tahom depth contour, as defined by the following coordinates:

- 47°31.70'N lat. 124°37.03'W long.;
47°25.67'N lat. 124°34.79'W long.;
47°12.82'N lat. 124°29.12'W long.;
46°52.94'N lat. 124°22.58'W long.;
46°44.18'N lat. 124°18.00'W long.;
46°38.17'N lat. 124°15.88'W long.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective June 16, 2006:

WAC 220-56-23000E Bottomfish closed areas.

**WSR 06-07-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-37—Filed March 6, 2006, 4:27 p.m., effective March 6, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Y; 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 third winter salmon directed fishing period. Season is consistent with the 2006 commercial salmon fishing plan. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26 and March 6, 2006, and conforms Washington and Oregon state rules. The select area fisheries (SAFE) in Deep River and Blind Slough/Knappa Slough are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. The increased time (Deep River) and area (Knappa Slough) for the winter/spring of 2006 will allow for additional opportunity to harvest salmon originating from the select areas. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26, 2006, and March 6, 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 1.

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

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

Date Adopted: March 6, 2006.

Evan Jacoby  
for Jeff Koenings  
Director

NEW SECTION

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

1. Area: SMCRA 1A, 1B, 1C, and 1D upstream to Kelley Point.

a) Season: 6:00 a.m. March 7 through 6:00 a.m. March 8, 2006.

b) Gear: Drift gill nets only. 8-inch minimum and 9 3/4 inch maximum mesh. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required. Net length not to exceed 150 fathoms.

c) Allowable Sale: Adipose fin-clipped salmon, sturgeon, and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Elokom-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B.

e) Miscellaneous Regulations:

i. Quick reporting is in effect for Washington wholesale dealers, WAC 220-69-240.

ii. At least one fisher on each boat must have Columbia River tangle net certification.

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

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

v. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of

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

vi. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and the least possible injury to the fish or placed into an operating recovery box. Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

vii. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with Department observers or observers collecting data for the Department, when notified by the observer of their intent to board the commercial vessel for observation and sampling during an open fishery.

viii. Columbia River tangle net certification: Any individual meeting the qualifications of RCW 77.65.040(2) and obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

ix. Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If WDFW authorizes a tangle net fishery in any other time, WDFW may establish qualifications and requirements that are different from those established for 2006. In particular, WDFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

#### 2. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

b) Dates:

Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays and 7:00 p.m. Sunday to 7:00 a.m. Mondays immediately through March 13, 2006

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 until June 16, 2006.

Only Blind Slough is open through March 13. After March 13, both Blind Slough and Knappa Slough are open.

During May 1 through June 16, the lower boundary of the Knappa Slough fishing area is extended downstream to

boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 7-inch minimum mesh through March 13 and 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

#### 3. Deep River Select Area

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

b) Dates:

Winter season: 6:00 p.m. Mondays to 8:00 a.m. Tuesdays immediately through March 14, 2006

Spring season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 through June 16, 2006

c) Gear: 7-inch maximum mesh size through March 14, 8" maximum thereafter. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, sturgeon and shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful. An exception to the rule would allow fishers to transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Y Columbia River seasons below Bonneville. (06-33)

**WSR 06-07-032  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 06-43—Filed March 7, 2006, 4:37 p.m., effective March 16, 2006]

Effective Date of Rule: March 16, 2006.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: All age classes of spring chinook returning to Carson, Little White Salmon and Klickitat hatcheries will be adipose fin clipped (mass marked) in 2006. Selective fisheries will maximize opportunity for hatchery chinook while minimizing impacts to wild fish. Possible impacts to listed out-of-basin stocks will be further reduced on the lower Wind, White Salmon rivers and Drano Lake. The 1,300 adult spring chinook forecasted to return to the Klickitat River in 2006 will not support a full sport fishery while meeting escapement needs. 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: March 8 [7], 2006.

J. P. Koenings  
Director

## NEW SECTION

**WAC 232-28-61900K Exceptions to statewide rules—Klickitat River, Drano Lake and Wind River.** Notwithstanding the provisions of WAC 232-28-619:

### (1) **Klickitat River (Klickitat Co.)**

(a) Effective April 1 through May 31, 2006, it is lawful to fish for salmonids in those waters of the Klickitat River from the mouth to Fisher Hill Bridge - open only on Mondays, Wednesdays and Saturdays. Daily limit of one chinook salmon greater than 12 inches in length or one hatchery steelhead greater than 20 inches in length. Release all wild Chinook and wild steelhead.

(b) Effective June 1, 2006 until further notice, open 7 days per week. Daily limit of six salmon no more than 2 adults except jacks only from 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon Hatchery. Trout daily limit is 2 fish. Release all wild Chinook and wild steelhead. Minimum size is 12 inches for both salmon and trout.

(2) **Little White Salmon River (Drano Lake) (Skamania Co.)** Effective March 16 through June 30, 2006, it is lawful to fish for salmonids in those waters of the Little White Salmon River (Drano Lake) downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Except closed Wednesdays April 12 through May 31, 2006. Release all Wild Chinook and wild steelhead.

### (3) **White Salmon River (Klickitat/Skamania Co.)**

(a) Effective April 1 through June 30, 2006, it is lawful to fish for salmonids in those waters of the White Salmon River from markers on the east and west shores and when buoys are in place southerly to the buoys and east-west between the buoys upstream to the powerhouse. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Release all wild Chinook and wild steelhead.

(b) Effective April 1 through June 15, 2006, it is lawful to fish for salmonids from the powerhouse to 400 feet downstream from Northwestern (Condit) Dam. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Release all wild Chinook and wild steelhead.

(4) **Wind River (Skamania Co.)** Effective March 16 through June 30, 2006, it is lawful to fish for salmonids in those waters of the Wind River from boundary line/markers to 400 feet below Shipherd Falls. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Release all wild Chinook and wild steelhead.

## **WSR 06-07-040**

### **EMERGENCY RULES**

### **DEPARTMENT OF**

### **FISH AND WILDLIFE**

[Order 06-41—Filed March 8, 2006, 4:06 p.m., effective March 8, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Z; 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 fourth winter salmon directed fishing period. Season is consistent with the 2006 commercial salmon fishing plan. Impacts to ESA-listed

stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26 and March 8, 2006, and conforms Washington and Oregon state rules. The select area fisheries (SAFE) in Deep River and Blind Slough/Knappa Slough are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. The increased time (Deep River) and area (Knappa Slough) for the winter/spring of 2006 will allow for additional opportunity to harvest salmon originating from the select areas. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26, 2006, and March 8, 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 1.

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

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

Date Adopted: March 8, 2006.

J. P. Koenings  
Director  
by Larry Peck

## NEW SECTION

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

1. Area: SMCRA 1A, 1B, 1C, and 1D upstream to Kelley Point.

a) Season: 12:00 p.m. March 9 through 6:00 a.m. March 10, 2006.

b) Gear: Drift gill nets only. 8-inch minimum and 9 3/4 inch maximum mesh. Mono-filament is allowed. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required. Net length not to exceed 150 fathoms.

c) Allowable Sale: Adipose fin-clipped salmon, sturgeon, and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Elokom-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B.

e) Miscellaneous Regulations:

i. Quick reporting is in effect for Washington wholesale dealers, WAC 220-69-240.

ii. At least one fisher on each boat must have Columbia River tangle net certification.

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

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

v. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

vi. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and the least possible injury to the fish or placed into an operating recovery box. Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

vii. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with Department observers or observers collecting data for the Department, when notified by the observer of their intent to board the commercial vessel for observation and sampling during an open fishery.

viii. Columbia River tangle net certification: Any individual meeting the qualifications of RCW 77.65.040(2) and obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

ix. Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If WDFW authorizes a tangle net fishery in any other time, WDFW may establish qualifications and requirements that are different from those established for 2006. In particular, WDFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

## 2. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

b) Dates:

Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays and 7:00 p.m. Sunday to 7:00 a.m. Mondays immediately through March 13, 2006

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 until June 16, 2006.

Only Blind Slough is open through March 13. After March 13, both Blind Slough and Knappa Slough are open.

During May 1 through June 16, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 7-inch minimum mesh through March 13 and 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

## 3. Deep River Select Area

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

b) Dates:

Winter season: 6:00 p.m. Mondays to 8:00 a.m. Tuesdays immediately through March 14, 2006

Spring season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 through June 16, 2006

c) Gear: 7-inch maximum mesh size through March 14, 8" maximum thereafter. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets can-

not be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, sturgeon and shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful. An exception to the rule would allow fishers to transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Z Columbia River seasons below Bonneville. (06-37)

## WSR 06-07-041 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 06-42—Filed March 8, 2006, 4:07 p.m., effective March 8, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.240.

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

Reasons for this Finding: Modifies the on-going smelt fishery to close on Thursday, March 9, 2006, and open Saturday, March 11, 2006 instead. Industry requested the change to avoid conflict with commercial salmon fishing periods. Management will monitor interaction between sport and commercial fleets on a weekly basis. The smelt fishery regulations remain 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, and March 9, 2006. 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 2.

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

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

Date Adopted: March 8, 2006.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

**WAC 220-33-04000Z Smelt—Areas and seasons.** Notwithstanding the provisions of WAC 220-33-040, effective immediately 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. Except closed Thursday March 9, 2006.

Open 7:00 a.m. to 4:00 p.m. Saturday March 11, 2006

**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:

WAC 220-33-04000Y Smelt—Areas and seasons.  
(05-284)

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

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

#### **WSR 06-07-043**

#### **EMERGENCY RULES**

#### **STATE BOARD OF HEALTH**

[Filed March 8, 2006, 4:46 p.m., effective March 8, 2006]

Effective Date of Rule: Immediately.

Purpose: (1) Requires department review of available records to reascertain the names (replace coded identifiers with names) of previously reported asymptomatic HIV cases. (2) Allows department to maintain those cases in a named-based surveillance system, to comply with Centers for Disease Control and Prevention's HIV reporting requirements. (3) Permits local health jurisdiction's to assist department in reascertaining names. Names must be destroyed at local level within three days of reporting the names to the department.

Citation of Existing Rules Affected by this Order: Amending WAC 246-101-520 and 246-101-635, Special conditions—AIDS and HIV.

Statutory Authority for Adoption: RCW 70.24.125.

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

Reasons for this Finding: The Centers for Disease Control and Prevention (CDC) has clearly communicated that only HIV case data reported through a name based system will be accepted. Washington currently uses a name to code system and HIV case reports are not included in the national database. In fiscal year 2007, Federal Ryan White CARE Act funding will be calculated on the proportion of states' HIV cases. WAC 246-101-520 and 246-101-635 must be revised to enable the department of health to reascertain HIV case data to the CDC by the June 30, 2006, deadline and maintain HIV/AIDS care funding.

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: March 8, 2006.

Craig McLaughlin  
Executive Director

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

**WAC 246-101-520 Special conditions—AIDS and HIV.** (1) The local health officer and local health department personnel shall maintain individual case reports for AIDS

and HIV as confidential records consistent with the requirements of this section. The local health officer and local health department personnel shall:

(a) Use identifying information on HIV-infected individuals only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; or

(iv) As specified in WAC 246-100-072; or

(v) To provide case reports that contain identifying information to the state health department.

(b) Destroy case report identifying information on asymptomatic HIV-infected individuals received as a result of this chapter within three months of receiving a complete case report.

(c) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first unless such documentation is being used in an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

(d) Not disclose identifying information received as a result of this chapter unless:

(i) Explicitly and specifically required to do so by state or federal law; or

(ii) Authorized by written patient consent.

(2) Local health department personnel are authorized to use HIV identifying information obtained as a result of this chapter only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services;

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department; and

(d) Investigations pursuant to RCW 70.24.022 or 70.24.024.

(3) Public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) Local health officials will report asymptomatic HIV infection cases to the state health department (~~(according to a standard code developed by the state health department)~~).

(5) Local health officers shall require and maintain signed confidentiality agreements with all health department employees with access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter

70.24 RCW and other administrative actions that may be taken by the department.

(6) Local health officers shall investigate potential breaches of the confidentiality of HIV identifying information by health department employees. All breaches of confidentiality shall be reported to the state health officer or their designee for review and appropriate action.

(7) Local health officers and local health department personnel shall:

(a) Assist the state health department to reascertain (replace coded identifiers with names) the identities of previously reported cases of asymptomatic HIV infection;

(b) Within three days of obtaining the identities, report the identities of such previously reported cases to the state health department; and

(c) Destroy the identifying information upon report to the state health department.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-635 Special conditions—AIDS and HIV.** The following provisions apply for the use of AIDS and HIV notifiable conditions case reports and data:

(1) Department personnel shall not disclose identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV unless:

(a) Explicitly and specifically required to do so by state or federal law; or

(b) Authorized by written patient consent.

(2) Department personnel are authorized to use HIV identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services; and

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department.

(3) For the purposes of this chapter, public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) The state health officer shall require and maintain signed confidentiality agreements with all department employees with access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(5) The state health officer shall investigate potential breaches of the confidentiality of HIV identifying information by department employees. All breaches of confidentiality shall be reported to the state health officer or their authorized representative for review and appropriate action.

(6) The department shall maintain all HIV case reports in a name-based surveillance system solely for the purpose of complying with HIV reporting requirements from the federal Centers for Disease Control and Prevention.

(7) Authorized representatives of the department shall review available records to reascertain the identities of previously reported cases of asymptomatic HIV infection and retain those cases in a confidential name-based system.

(8) When providing technical assistance to a local health department, authorized representatives of the department may temporarily and subject to the time limitations in WAC ((246-101-525(2))) 246-101-520 receive the names of reportable cases of asymptomatic HIV infection for the purpose of ((HIV surveillance,)) partner notification, or special studies. Upon completion of the activities by representatives of the state health department, named information will be((:

(a)) provided to the local health department subject to the provisions of WAC ((246-101-525(2); and

(b) ~~Converted to code and maintained as code only until the person is diagnosed with AIDS))~~ 246-101-520.

((7)) (9) Within twelve months of the effective date of the HIV infection notification system (by September 1, 2000), established in this chapter, the state health officer, in cooperation with local health officers, will report to the board on:

(a) The ability of the reporting system to meet surveillance performance standards established by the federal Centers for Disease Control and Prevention;

(b) The cost of the reporting system for state and local health departments;

(c) The reporting system's effect on disease control activities; and

(d) The impact of HIV reporting on HIV testing among persons at increased risk of HIV infection.

### WSR 06-07-060

#### EMERGENCY RULES

#### HORSE RACING COMMISSION

[Filed March 10, 2006, 12:56 p.m., effective March 10, 2006]

Effective Date of Rule: Immediately.

Purpose: To adopt on an emergency basis amendments to chapter 260-70 WAC, Controlled medication program.

Citation of Existing Rules Affected by this Order: Amending WAC 260-70-500, 260-70-510, 260-70-520, 260-70-530, 260-70-540, 260-70-545, 260-70-550, 260-70-560, 260-70-570, 260-70-580, 260-70-590, 260-70-610, 260-70-620, 260-70-630, 260-70-640, 260-70-645, 260-70-650, 260-70-660, 260-70-675, 260-70-680, 260-70-720, and 260-70-730.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

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: Changes to the equine health and medication rules are vital for the protection of the health and safety of the jockey and other participants that the amendments to this chapter are necessary to be adopted by the start of live racing in Washington on April 8, 2006. (*Special note: This chapter is scheduled for permanent adoption on April 7, 2006, but cannot take effect for an additional thirty-one days.*)

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 22, 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 22, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 9, 2006.

R. M. Leichner  
Executive Secretary

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-500 Definitions applicable to chapter 260-70 WAC.** (1) "Interfering substance" or "interfere" means and refers to any medication which might mask or screen the presence of prohibited drugs or prevent testing procedures.

(2) "Post time" means the time set for the arrival ((at the starting point)) of the horses at the starting point in a race as specified in writing and posted by the board of stewards.

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-510 Equine health and safety.** The purpose of this chapter is to protect the integrity of horse racing, to ensure the health and welfare of ((animals)) horses under the jurisdiction of the commission and to safeguard the interests of the public and the participants in racing. With this in mind, the commission shall convene an annual meeting, open to all interested parties, for the ((purpose of)) review of veterinarian practices, equine health and medication. Such meeting shall include:

(1) An annual report from an official veterinarian.

(2) Presentation of data regarding equine medication and treatment, including a review of the commission's ((list of)) quantitative medication levels and any recommendations for modifications ((to the list of quantitative medication levels)).

(3) Public comment regarding equine health and safety, medication and veterinarian practices.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-520 Trainer responsibility.** The purpose of this subsection is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well being of horses in his/her care.

(1) The trainer is ~~((solely))~~ responsible for the condition of horses in his/her care.

(2) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

(3) A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(4) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(5) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

~~((g))~~ ~~((Promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;~~

~~((h))~~ Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

~~((i))~~ ~~((h))~~ Maintaining a knowledge of the medication record and medication status of horses in his/her care;

~~((j))~~ ~~((i))~~ Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

~~((k))~~ ~~((j))~~ Ensuring the fitness to perform creditably at the distance entered;

~~((l))~~ ~~((k))~~ Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in this chapter;

~~((m))~~ ~~((l))~~ Ensuring proper bandages, equipment and shoes; and

~~((n))~~ ~~((Presence in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;~~

~~((o))~~ ~~((Personally attending in the paddock and supervising the saddling thereof, unless excused by the stewards; and~~

~~((p))~~ ~~((m))~~ ~~((Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.~~

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-530 Veterinarians under authority of official veterinarian.** Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the authority of the official veterinarian and the stewards. An official veterinarian shall ~~((recommend))~~ make a recommendation to the stewards or the commission of the discipline ~~((, which may))~~ to be imposed upon a veterinarian who ~~((violates))~~ has violated the rules.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-540 Veterinarians' reports.** (1) Every veterinarian who treats a racehorse at any location under the jurisdiction of the commission shall, in writing on a form approved by the commission, provide a treatment report to an official veterinarian. The report shall include the name of the horse treated, any medication, drug or substance or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(2) The report shall be signed by the practicing veterinarian ~~((~~

~~((3))~~ ~~((The report shall be on file not)), and filed with the official veterinarian no later than ~~((the time prescribed on the next race day by the official veterinarian. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.~~~~

~~((4))~~ ~~((post time of the race for which the horse is entered.~~

~~((3))~~ A timely and accurate ~~((filing of a veterinarian report that is consistent with the analytical results of a positive test))~~ treatment report may be used ~~((as a mitigating factor in determining the nature and extent of a violation of these rules))~~ in the mitigation of the penalty.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-545 Prohibited practices.** The following are ~~((considered))~~ prohibited practices:

(1) The possession or use of a drug, substance or medication, specified ~~((below))~~ in subsection (3) of this section, on the premises of a facility under the jurisdiction of the commission ~~((for which a recognized analytical method has not~~

been developed to detect and confirm the administration of such substance); or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or

(2) The possession or use of a drug or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in human or animal (~~is forbidden~~), or any forbidden substance.

(3) The possession and/or use of blood doping agents, including, but not limited to, those listed below, on the premises of a facility under the jurisdiction of the commission (~~is forbidden~~):

- (a) Erythropoietin
- (b) Darbepoietin
- (c) Oxyglobin
- (d) Hemopure

(4) ~~((The practice, administration or application of a treatment, procedure, therapy or method identified below, which is performed on the premises of any facility under jurisdiction of the commission and which may endanger the health and welfare of the horse, endanger the safety of the rider, or the use of which may adversely affect the integrity of horse racing:~~

~~(a) Intermittent Hypoxic Treatment by External Device.~~

~~(b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:~~

~~(i) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;~~

~~(ii) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the commission;~~

~~((iii)) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:~~

~~(a) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;~~

~~(b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed by the commission;~~

~~(c) Prior to use, a report has been filed with an official veterinarian advising that any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machine((s)) is on the association grounds (~~must be reported to an official veterinarian before use~~);~~

~~((iv)) (d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments (~~must be~~) are reported to an official veterinarian on the prescribed form not later than the time prescribed by an official veterinarian.~~

~~((e)) (5) The use of a naso gastric tube (a tube longer than six inches) for the administration of any substance within twenty-four hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of an official veterinarian.~~

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-550 ((Medical)) Medication labeling.**

(1) No person on association grounds (~~where horses are lodged or kept~~), excluding licensed veterinarians, shall have in or upon association grounds (~~which that person occupies or has the right to occupy~~), or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

(2) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with applicable state statutes. All such allowable medications must have a prescription label, which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of each (~~patient~~)horse((~~h~~)) for whom the product is intended/prescribed;

(d) The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

(e) The name of the (~~person~~)trainer((~~s~~)) to whom the product was dispensed.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-560 Treatment restrictions.** (1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) Nonveterinarians may administer the following substances, provided that, in post race testing the substances do not exceed approved quantitative levels, (~~if any~~), and the substances do not interfere with post race testing:

(a) A recognized noninjectable nutritional supplement or other substance (~~approved~~), except that any such supplements or substances that have been disapproved by an official veterinarian may not be administered;

(b) A noninjectable substance on the direction or by prescription of a licensed veterinarian; or

(c) A noninjectable nonprescription medication or substance.

(3) No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the (~~commission~~) stewards. At any location under the jurisdiction of the commission, veterinarians may use only onetime disposable needles, and shall dispose of them in a manner approved by the (~~commission~~) stewards. If a person has a medical condition which makes it necessary to have a needle and syringe at any location under the jurisdiction of the commission, that person

may request permission of the stewards (~~and/or the commission~~) in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe, and must comply with any conditions and restrictions (~~set~~) on possession of a needle and syringe established by the stewards (~~and/or the commission~~).

(4) Veterinarians shall not treat or administer medication or drugs to any entered horse on a race day, and before the post time for the race the horse is entered to run, except for the administration of furosemide under the guidelines set forth in WAC 260-70-650, unless approved by the official veterinarian.

(5) Any horse entered for racing must be present on the grounds as follows, except with the prior approval of the official veterinarian:

(a) A first time starter must be present on the grounds two hours prior to the first post time or five hours prior to the post for the race the horse is entered for racing, whichever is earlier.

(b) A horse that has previously started must be present on the grounds five hours prior to the post time for the race the horse is entered for racing.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-570 Physical inspection of horses.** All horses at locations under the jurisdiction of the commission shall be subject to inspections at the discretion of the stewards or an official veterinarian.

(1) Every horse entered to participate in an official race shall be subject to ~~(a veterinary inspection)~~ an inspection by an official veterinarian.

~~(2) ((The inspection shall be conducted by an official veterinarian.~~

~~(3))~~ (3) The trainer of each horse or a representative of the trainer shall present the horse for inspection as required by an official veterinarian.

~~((4))~~ (3) The ((veterinary inspection of a horse's racing condition, at a minimum shall include)) assessment of a horse's racing condition shall be based on the recommendations of the American Association of Equine Practitioners and shall include:

- (a) Proper identification of each horse inspected;
- (b) Observation of each horse in motion;
- (c) Manual palpation when indicated;
- (d) Close observation in the paddock and saddling area, during the parade to post and at the starting gate; and
- (e) Any other inspection deemed necessary by an official veterinarian.

~~((5))~~ (4) Every horse shall be observed by an official veterinarian during and after the race.

~~((6))~~ (5) The official veterinarian shall maintain a continuing health and racing soundness record of each horse inspected.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-580 Veterinarian's list.** (1) An official veterinarian shall maintain a list of all horses which are deter-

mined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the official veterinarian, the horse is capable of competing in a race.

~~((3) An official veterinarian shall maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by an official veterinarian. Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:~~

~~(a) First incident – fourteen days;~~

~~(b) Second incident within a three hundred sixty-five day period – thirty days;~~

~~(c) Third incident within a three hundred sixty-five day period – one hundred eighty days;~~

~~(d) Fourth incident within a three hundred sixty-five day period – barred from racing for life.~~

~~(4) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.~~

~~(5) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined in this section.~~

~~(6) A horse may be removed from the bleeder list only upon the direction of an official veterinarian, who shall certify in writing to the stewards the recommendation for removal.~~

~~(7) A horse, which has been placed on a bleeder list in another jurisdiction pursuant to this section, shall be placed on the bleeder list maintained by an official veterinarian.)~~ (a) Horses placed on the veterinarian's list will remain on the list for a minimum of ten days. For purposes of counting days, the first day on the veterinarian's list is the day the horse is placed on the veterinarian's list.

(b) A horse may be removed from the veterinarian's list after the tenth day. Horses that must work to be removed from the veterinary list due to soreness, lameness, or certain injuries will be allowed to work no sooner than the eleventh day after being placed on the list.

(i) Works should be scheduled with the official veterinarian twenty-four hours in advance.

(ii) Horses must work a minimum distance to be determined by the official veterinarian in a time comparable for the track condition that day.

(iii) A blood test will be taken by an official veterinarian following the workout and medications levels may not exceed permitted post-race levels.

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

**WAC 260-70-590 Reporting to the test barn.** (1) The official winning horse and any other horse ordered by the stewards, official veterinarian or the commission shall be taken to the test barn to have a blood and/or urine sample taken at the direction of an official veterinarian.

(2) Random or extra testing may be required by the stewards, the official veterinarian, or the commission at any time on any horse on association grounds.

(3) Unless otherwise directed by the stewards or an official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(4) Access to the test barn (~~and, if applicable, receiving barn~~) shall be monitored and restricted. All persons who wish to enter the test barn (~~receiving barn area~~) must be currently licensed by the commission, display their commission identification badge and have a legitimate reason for being in the test barn area. No horse shall have more than three representatives in the test barn at any one time.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-610 Storage and shipment of split samples.** (1) Split samples obtained in accordance with WAC 260-70-600(~~(- subsection)~~) (2)(b) and (~~(2)~~) (c) shall be secured and made available for further testing in accordance with the following procedures:

(a) A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location approved by the commission.

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be closed and locked to prevent access to the freezer at all times except as specifically provided by these rules.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the official veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, and the time the freezer was closed and to verify that the lock was secured prior to and after opening of the freezer.

(e) Any evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to an official veterinarian or a designated commission representative.

(2) A trainer or owner of a horse having been notified that a written report from a primary laboratory states that a substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the commission. The request must be made in writing and delivered to the stewards not later than 48 hours after the trainer of the horse receives written notice of the findings of the primary laboratory. (~~Any~~) The split sample (~~so requested must~~) shall be shipped within (~~an additional 72~~) seventy-two hours of the delivery of the request for testing to the stewards.

(3) The owner or trainer requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the official veterinarian to package the split sample for shipping shall constitute a waiver of all rights to split sample testing. Prior to shipment, the (~~commission shall confirm the~~) split sample laboratory's willingness to provide the testing requested (~~the laboratory's willingness~~) and to send results to both the person requesting the testing and the commission, (~~and~~) shall be confirmed. Arrangements for payment satisfactory to the split sample laboratory shall also be confirmed. A laboratory for the testing of a split sample (~~testing laboratory~~) must be approved by the commission. The commission shall maintain a list of laboratories approved for testing of split samples.

(4) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form (~~that shall provide a place for recording the following information and such other information as the official veterinarian may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample~~). The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep the original and provide a copy for the owner, trainer or designee.

Split sample chain of custody verification form requirements:

- (a) The date and time the sample is removed from the split sample freezer;
- (b) The sample number;
- (c) The address where the split sample is to be sent;
- (d) The name of the carrier and the address where the sample is to be taken for shipment;
- (e) Verification of retrieval of the split sample from the freezer;
- (f) Verification of each specific step of the split sample packaging in accordance with the recommended procedure;
- (g) Verification of the address of the split sample laboratory on the split sample package;
- (h) Verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and
- (i) The date and time custody of the sample is transferred to the carrier.

(5) A split sample shall be removed from the split sample freezer, and packaged for shipment by (~~a commission representative~~) an official veterinarian or designee in the presence of the owner, trainer or designee.

(~~(6) A commission representative shall pack the split sample for shipment in the presence of the owner, trainer or designee, in accordance with the packaging procedures recommended by the commission. A~~) The split sample chain of custody verification form shall be signed by both the owner's representative and the (~~commission representative~~) official veterinarian or designee to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package. The owner, trainer or designee may inspect the package containing the split sample

immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

~~((7)) (6) The package containing the split sample shall be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission approved laboratory selected by the owner or trainer.~~

~~((8) The owner, trainer or designee may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.~~

~~(9) The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep the original and provide a copy for the owner, trainer or designee.)~~

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-620 Medication restrictions.** (1) ~~(No horse shall have in its body any prohibited or interfering substance, or permitted medication, except as provided in this chapter.~~

~~(2)) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:~~

- ~~(a) Drugs or medications for which no acceptable threshold concentration has been established;~~
- ~~(b) Therapeutic medications in excess of established threshold concentrations;~~
- ~~(c) Substances present in the horse in excess of concentrations at which such substances could occur naturally; and~~
- ~~(d) Substances foreign to a horse at concentrations that cause interference with testing procedures.~~

~~((3)) (2) Except as otherwise provided by this chapter, a person may not administer or cause to be administered to a horse by any means, ((or attempt to administer by any means including naso-gastric tube or dose syringe, to a horse)) a prohibited drug, medication, chemical or other substance, including any ((permitted) restricted medication(;-)) pursuant to this chapter during the ((24-)) twenty-four hour period before post time for the race in which the horse is entered.~~

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-630 Threshold levels.** (1) The following quantitative medication levels are permissible in test samples up to the stated quantitative levels:

Procaine	25 ng/ml urine
Benzocaine	50 ng/ml urine
Mepivacaine	10 ng/ml urine
Lidocaine	50 ng/ml urine
Bupivacaine	5 ng/ml urine

Clenbuterol	25 pg/ml serum or plasma
Acepromazine	25 ng/ml urine
Promazine	25 ng/ml urine
Salicylates	750,000 ng/ml urine
Albuterol	1 ng/ml urine
Pyrimidine	50 ng/ml urine
Theobromine	2000 ng/ml urine

The official urine test sample may not contain more than one of the above drug substances, including their metabolites or analogs, in an amount ~~((up to))~~ exceeding the specified level. Official blood test samples must not contain any of the drug substances listed above, including their metabolites or analogs, except for ~~((their))~~ the threshold(s) amount established in this rule.

~~(2) ((The following))~~ Certain substances ((shall) can be considered environmental contaminants ((and are permissible in test samples up to the stated quantitative levels)) in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases.

(3) Certain drugs are recognized as substances of human use and addiction and which could be found in a horse. The following are permissible in test samples up to the stated quantitative levels:

Caffeine	100 ng/ml serum or plasma
Benzoylcegonine	50 ng/ml urine
Morphine Glucuronides	50 ng/ml urine

(4) If the preponderance of evidence presented in a stewards ruling conference shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-640 Permitted medication.** Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication shall be a violation of these rules.

~~(1) ((Nonsteroidal anti-inflammatory drugs (NSAIDs)-~~

~~(2)) The use of one of three approved nonsteroidal anti-inflammatory drugs (NSAIDs) shall be permitted under the following conditions:~~

~~(a) ((Not to))~~ The drug shall not exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least twenty-four hours before the post time for the race in which the horse is entered:

- ~~(i) Phenylbutazone - 5 micrograms per milliliter;~~
- ~~(ii) Flunixin - 20 nanograms per milliliter;~~
- ~~(iii) Ketoprofen - 10 nanograms per milliliter.~~



~~(b) ((These or any other)) No NSAID ((are prohibited to be)), including the approved NSAIDs listed in this rule, may be administered within the twenty-four hours before post time for the race in which the horse is entered.~~

(c) The presence of more than one of the three approved NSAIDs, with the exception of Phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted ~~((, except the presence of two approved NSAIDs is allowed if one of them is phenylbutazone with a concentration of less than 1 mcg/ml)).~~ The use of all but one of the approved NSAIDs shall be discontinued at least forty-eight hours before the post time for the race in which the horse is entered.

~~((3))~~ (2) Any horse to which a NSAID has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-645 Anti-ulcer medications.** The following anti-ulcer medications are permitted to be administered, at the stated dosage, up to twenty-four hours prior to the race in which the horse is entered.

- (1) Cimetidine (Tagamet®) - 8-20 mg/kg PO BID - TID
- (2) Omeprazole (Gastrogard®) - 2.2 grams PO SID
- (3) Ranitidine (Zantac®) - 8 mg/kg PO BID

~~((Noninterfering levels of sulfa drugs, antibiotics, anthelmintics and vitamins in a horse's post race urine or serum or plasma test may not be considered a violation of these rules.))~~

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-650 Furosemide.** (1) Furosemide may be administered intravenously to a horse which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the furosemide or bleeder list.

(2) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered on the grounds of the association, by a single intravenous injection, prior to post time for the race for which the horse is entered.

(b) The furosemide dosage administered shall not exceed 500 mg nor be less than 150 mg.

(c) The trainer of the treated horse shall cause to be delivered to an official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission:

(i) The name of the horse, the horse's tattoo number, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; and

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide.

(iv) The signature of the trainer or his/her representative.

(d) Failure to administer furosemide in accordance with these rules may result in the horse being scratched from the race by the stewards.

(e) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

(i) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;

(ii) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-660 Furosemide and bleeder lists.** ~~((1))~~ (a) The official veterinarians shall maintain a furosemide list and a bleeder list of all horses eligible to race with furosemide. The list is a statewide list that applies ~~((only at Class A or Class B))~~ to all licensed associations ~~((and not at any other track)).~~

~~((b))~~ (1) Furosemide list.

(a) A horse is eligible to race with furosemide if the licensed trainer and/or veterinarian determine that it would be in the horse's best interests to race with furosemide. Notification using prescribed commission forms must be given to the ~~((commission representative, providing sufficient time))~~ official veterinarian prior to the close of entries to ensure public notification.

~~((e))~~ (b) If the ~~((commission))~~ official veterinarian so orders, a horse~~((s))~~ placed on the furosemide list shall be placed ~~((in a prerace detention))~~ in detention in its regularly assigned stall, no later than four hours prior to the scheduled post time for any race in which it is entered to start, and with oral or written notification to the trainer may be watched by commission staff. ~~((The detention stall shall be the stall regularly assigned that horse for its customary stabling.))~~ Once placed in ~~((the))~~ detention ~~((stall))~~, a horse must remain in its barn or on its assigned hotwalker until it is taken to the receiving barn or to the paddock to be saddled for the race, except that the stewards may permit a horse~~((s))~~ to leave ~~((the))~~ detention ~~((stall))~~ to engage in exercise blowouts or warm-up heats.

~~((2))~~ (c) The confirmation of a horse eligible to race with furosemide must be certified in writing by an official veterinarian and entered on the furosemide list. Copies of the

certification shall be issued to the owner of the horse or the owner's designee upon request. ~~((A notice of a horse's furosemide certification shall be affixed to the horse's certificate of registration.~~

~~((3))~~ (d) Every horse eligible to race with furosemide, regardless of age, shall be placed on the furosemide list.

~~((4))~~ (e) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and/or veterinarian submit(s) a written request to remove the horse from the list. The request must be on forms provided by the official veterinarian and must be submitted to the ~~((commission designee))~~ official veterinarian no ~~((late))~~ later than time of entry. After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of sixty calendar days unless determined to be detrimental to the welfare of the horse, in consultation with an official veterinarian. If a horse is removed from the official furosemide list a second time in a three hundred sixty-five day period, the horse may not be placed back on the list for a period of ninety calendar days.

~~((5))~~ (2) Bleeder list.

(a) The official veterinarian shall maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.

(b) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(i) First incident - fourteen days;

(ii) Second incident within three hundred and sixty-five day period - thirty days;

(iii) Third incident within three hundred and sixty-five day period - one hundred and eighty days;

(iv) Fourth incident within three hundred and sixty-five day period - barred from racing for life.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.

(e) Every horse that is confirmed a bleeder shall have a notation affixed to the horse's certificate of registration.

(f) A horse may be removed from the bleeder list only upon the direction of the official veterinarian.

(3) A horse which has been placed on a furosemide or bleeder list in another jurisdiction may be placed on the furosemide list in this jurisdiction.

~~((6))~~ The specific gravity of post race urine samples shall not be below 1.010. If the specific gravity of the post race urine sample is determined to be below 1.010, quantitation of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of WAC 260-84-100.

~~((7))~~ A horse that has been administered furosemide that does not show a detectable concentration of the drug in the post race serum, plasma or urine sample shall be in violation of these rules.)

AMENDATORY SECTION (Amending WSR 05-17-123, filed 8/18/05, effective 9/18/05)

**WAC 260-70-675 Bicarbonate testing.** No bicarbonate-containing substance or alkalinizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or total carbon dioxide in a horse shall be administered to a horse within twenty-four hours of post time of the race in which the horse is entered.

The official veterinarian, the board of stewards or the executive secretary acting on behalf of the commission may at their discretion and at any time order the collection of test samples from any horses ~~((present))~~ either in the horse's stall or within the receiving or test barn to determine the serum or plasma pH or concentration of bicarbonate, total carbon dioxide, or electrolytes.

Test samples shall not exceed 37.0 millimoles of total carbon dioxide concentration per liter of serum or plasma. A serum or plasma total carbon dioxide level exceeding this value shall constitute a violation of this rule. Penalties shall be assessed as a Class 4 violation as provided in WAC 260-84-110.

Split samples will be taken from all horses entered to run in a race when bicarbonate testing is to be done. When split samples are taken, they shall be shipped as soon as practical to the commission-approved laboratories for total carbon dioxide split sample testing. The commission shall be responsible for the cost of shipping and testing of split samples taken under this section.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-680 Uniform classification guidelines.** The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

(1) Class 1

Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the racehorse and their pharmacological potential for altering the performance of a race is very high.

(2) Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the racehorse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a racehorse. The following groups of drugs are in this class:

(a) Opiate partial agonists, or agonist-antagonists;

(b) Nonopiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

(c) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

(d) Drugs with prominent CNS depressant action;

(e) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

(f) Muscle blocking drugs, which have a direct neuromuscular blocking action;

(g) Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

(h) Snake venoms and other biologic substances, which may be used as nerve blocking agents.

(3) Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a racehorse. The following groups of drugs are in this class:

(a) Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

(b) A local anesthetic, which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

(c) Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

(d) Primary vasodilating/hypotensive agents; and

(e) Potent diuretics affecting renal function and body fluid composition.

(4) Class 4

This category is comprised primarily of therapeutic medications routinely used in racehorses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

(a) Nonopiate drugs which have a mild central analgesic effect;

(b) Drugs affecting the autonomic nervous system, which do not have prominent CNS, cardiovascular or respiratory effects;

(i) Drugs used solely as topical vasoconstrictors or decongestants,

(ii) Drugs used as gastrointestinal antispasmodics,

(iii) Drugs used to void the urinary bladder,

(iv) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

~~((e))~~ (v) Antihistamines, which do not have a significant CNS depressant effect (this does not include H1 blocking agents, which are listed in Class 5);

~~((d))~~ (c) Mineralocorticoid drugs;

~~((e))~~ (d) Skeletal muscle relaxants;

~~((f))~~ (e) Anti-inflammatory drugs—those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

(i) Nonsteroidal anti-inflammatory drugs (NSAIDs)~~((— aspirin-like drugs))~~;

(ii) Corticosteroids (glucocorticoids); and

(iii) Miscellaneous anti-inflammatory agents.

~~((g))~~ (f) Anabolic and/or androgenic steroids and other drugs;

~~((h))~~ (g) Less potent diuretics;

~~((h))~~ (h) Cardiac glycosides and antiarrhythmics including:

(i) Cardiac glycosides;

(ii) Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

(iii) Miscellaneous cardiotoxic drugs.

~~((i))~~ (i) Topical anesthetics—agents not available in injectable formulations;

~~((j))~~ (j) Antidiarrheal agents; and

~~((k))~~ (k) Miscellaneous drugs including:

(i) Expectorants with little or no other pharmacologic action;

(ii) Stomachics; and

(iii) Mucolytic agents.

~~((m))~~ ~~Substances foreign to a horse at levels that cause interference with testing procedures.)~~

(5) Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

(6) Nonclassified substances

Nonclassified substances are considered to have no effect on the physiology of a horse, except to improve nutrition or treat or prevent infections or parasite infestations. These substances normally include antimicrobials, antiparasitic drugs, and nutrients such as vitamins.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-720 Posterior digital neurectomy.** (1)

No person shall bring onto the grounds of a racing association, or enter or cause to be entered in any race, or sell, offer for sale, or act as ~~((a bloodstock))~~ an agent in the sale of ~~((s))~~ any horse on the grounds under the jurisdiction of the commission that has had a posterior digital neurectomy performed, or has had any nerve removed from the leg of such horse, except as provided in this chapter.

(2) A horse upon which a posterior digital neurectomy has been performed is eligible to race ~~((, provided that))~~ if the following conditions are met:

(a) Prior approval of an official veterinarian has been obtained before the horse was brought onto the grounds of the racing association;

(b) An official veterinarian is satisfied that the loss of sensation to ~~((such))~~ the horse due to the posterior digital neurectomy will not endanger the safety of ~~((any horse or rider, that the prior approval of an official veterinarian has been obtained if the horse is on the grounds of a racing association, that))~~ the public and the participants in racing and does not compromise the integrity of horse racing;

(c) The racing secretary is notified of the posterior digital neurectomy at the time ~~((such))~~ the horse is admitted to the grounds of ~~((a))~~ the racing association; and ~~((its))~~

(d) The horse's registration or eligibility certificate has been marked to indicate that a posterior digital neurectomy was performed.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

**WAC 260-70-730 Postmortem examination.** (1) The commission may require a postmortem examination of any horse that is injured ~~((in this jurisdiction))~~ on the grounds of a racing association during its scheduled race meet and training periods, while the horse is in training or in competition and that subsequently expires or is destroyed, or any horse that expires while housed on the grounds. In proceeding with a postmortem examination the commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

(2) ~~((The official veterinarian may require a postmortem examination of any horse that expires while housed on association grounds within this jurisdiction.))~~ Trainers and owners shall be required to ~~((empty))~~ cooperate with such action as a condition of licensure.

(3) The official veterinarian may take possession of the horse upon death for postmortem examination. The official veterinarian may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination ~~((of a horse))~~ may constitute a violation of these rules.

(5) The cost of commission-ordered postmortem examinations, testing and disposal shall be borne by the commission.

**WSR 06-07-068**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-45—Filed March 10, 2006, 3:09 p.m., effective March 13, 2006, 6:00 p.m.]

Effective Date of Rule: March 13, 2006, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600K; 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: These closures comply with state/treaty management agreements which have established closure periods to protect crab during softshell periods. 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: March 10, 2006.

Ronald McQueen  
for Larry Peck  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-52-04600L Crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

1) Effective immediately until further notice, it is unlawful to fish for Dungeness Crab for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 23C, 24A, 24B, 24C, 24D, 25B, 25D, 26A-W, 26A-E and 29.

2) Effective 6:00 p.m. March 22, 2006, until further notice, it is unlawful to fish for Dungeness Crab for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A, and 25E.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 13, 2006:

WAC 220-52-04600K Crab fishery—Seasons and areas. (06-32)

**WSR 06-07-079**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-44—Filed March 14, 2006, 11:03 a.m., effective March 14, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900J; 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: All age classes of spring chinook returning to Carson, Little White Salmon and Klickitat hatcheries will be adipose fin clipped (mass marked) in 2006. Selective fisheries will maximize opportunity for hatchery chinook while minimizing impacts to wild fish. Possible impacts to listed out-of-basin stocks will be further reduced on the lower Wind, White Salmon rivers and Drano Lake. The 1,300 adult spring chinook forecasted to return to the Klickitat River in 2006 will not support a full sport fishery while meeting escapement needs. 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: March 13, 2006.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

**WAC 232-28-61900L Exceptions to statewide rules—Klickitat River, Drano Lake, White Salmon River and Wind River.** Notwithstanding the provisions of WAC 232-28-619:

**(1) Klickitat River (Klickitat Co.)**

(a) Effective April 1 through May 31, 2006, it is lawful to fish for salmonids in those waters of the Klickitat River from the mouth to Fisher Hill Bridge - open only on Mondays, Wednesdays and Saturdays. Daily limit of one chinook salmon greater than 12 inches in length or one hatchery steelhead greater than 20 inches in length. Release all wild Chinook and wild steelhead. Night closure and non buoyant lure restrictions in effect.

(b) Effective June 1, 2006 until further notice, open 7 days per week. Daily limit of six salmon no more than 2 adults except jacks only from 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon Hatchery. Trout daily limit is 2 fish. Release all wild Chinook and wild steelhead. Minimum size is 12 inches for both salmon and trout.

**(2) Little White Salmon River (Drano Lake) (Skamania Co.)** Effective March 16 through June 30, 2006, it is lawful to fish for salmonids in those waters of the Little White Salmon River (Drano Lake) downstream of markers on point

of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Night closure and non buoyant lure restrictions in effect. Release all Wild Chinook and wild steelhead. Except closed Wednesdays April 12 through May 31, 2006.

**(3) White Salmon River (Klickitat/Skamania Co.)**

(a) Effective April 1 through June 30, 2006, it is lawful to fish for salmonids in those waters of the White Salmon River from markers on the east and west shores and when buoys are in place southerly to the buoys and east-west between the buoys upstream to the powerhouse. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Release all wild Chinook and wild steelhead.

(b) Effective April 1 through June 15, 2006, it is lawful to fish for salmonids from the powerhouse to 400 feet downstream from Northwestern (Condit) Dam. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Release all wild Chinook and wild steelhead.

**(4) Wind River (Skamania Co.)** Effective March 16 through June 30, 2006, it is lawful to fish for salmonids in those waters of the Wind River from boundary line/markers to 400 feet below Shipherd Falls. Daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Release all wild Chinook and wild steelhead. Night closure and non buoyant lure restrictions in effect. Only fish hooked inside the mouth may be retained.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900K	Exceptions to statewide rules—Klickitat River, Drano Lake, and Wind River. (06-43)
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**WSR 06-07-080  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 06-46—Filed March 14, 2006, 11:03 a.m., effective March 14, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000A; 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 fifth large mesh winter salmon directed fishing period. Season is consistent with the 2006 commercial salmon fishing plan. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26 and March 13, 2006, and conforms Washington and Oregon state rules. The select area fisheries (SAFE) in Deep River and Blind Slough/Knappa Slough are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. The increased time (Deep River) and area (Knappa Slough) for the winter/spring of 2006 will allow for additional opportunity to harvest salmon originating from the select areas. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26, 2006, and March 13, 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 1.

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

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

Date Adopted: March 13, 2006.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

**WAC 220-33-0100B Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad, taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E except during the times and conditions listed:

1. Area: SMCRA 1A, 1B, 1C, and 1D upstream to Kelley Point.

a) Season: 12:00 p.m. March 14 through 6:00 a.m. March 15, 2006.

b) Gear: Drift gill nets only. 8-inch minimum and 9 3/4 inch maximum mesh. Mono-filament is allowed. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required. Net length not to exceed 150 fathoms.

c) Allowable Sale: Adipose fin-clipped salmon, sturgeon, and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Elokomin-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B.

e) Miscellaneous Regulations:

i. Quick reporting is in effect for Washington wholesale dealers, WAC 220-69-240.

ii. At least one fisher on each boat must have Columbia River tangle net certification.

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

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

v. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

vi. All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and the least possible injury to the fish or placed into an operating recovery box. Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

vii. As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with Department observers or observers collecting data for the Department, when notified by the observer of their intent to board the commercial vessel for observation and sampling during an open fishery.

viii. Columbia River tangle net certification: Any individual meeting the qualifications of RCW 77.65.040(2) and obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

ix. Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If WDFW authorizes a tangle net fishery in any other time, WDFW may establish qualifications and requirements that are different from those established for 2006. In particular, WDFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

#### 2. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

b) Dates:

Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays and 7:00 p.m. Sunday to 7:00 a.m. Mondays immediately through March 13, 2006

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 until June 16, 2006.

Only Blind Slough is open through March 13. After March 13, both Blind Slough and Knappa Slough are open.

During May 1 through June 16, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 7-inch minimum mesh through March 13 and 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

#### 3. Deep River Select Area

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

b) Dates:

Winter season: 6:00 p.m. Mondays to 8:00 a.m. Tuesdays immediately through March 14, 2006

Spring season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 through June 16, 2006

c) Gear: 7-inch maximum mesh size through March 14, 8" maximum thereafter. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, sturgeon and shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful. An exception to the rule would allow fishers to transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000A Columbia River seasons below Bonneville. (06-41)

#### **WSR 06-07-085**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

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

(Aging and Disability Services Administration)

[Filed March 14, 2006, 4:17 p.m., effective March 14, 2006]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-825-228 and 388-825-254 to implement section 205 (1)(e), chapter 518, Laws of 2005, the budgeted allotment for the vendor rate increase (VRI) and the individual provider hourly rate. These rates increase the service need levels for fiscal year 2006 and fiscal year 2007. These emergency rules replace the emergency rules filed on November 15, 2005, as WSR 05-23-080.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-228 and 388-825-254.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: ESSB 6090 Conference Budget (section 205 (1)(a), chapter 518, Laws of 2005).

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

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

Reasons for this Finding: Chapter 518, Laws of 2005, raised these payment rates effective July 1, 2005. Emergency rules are necessary to ensure that vulnerable clients continue to receive services essential to their health and welfare without disruption and to ensure that providers can be paid at the higher rate authorized by the legislature. The department has filed a notice to adopt permanent rules as WSR 05-05-094. The department plans to file the CR-102 proposed rule-making notice for permanent adoption no later than April 30, 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 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: March 13, 2006.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 04-22-068, filed 10/29/04, effective 11/29/04)

**WAC 388-825-228 How can short-term intervention services through the family support opportunity program help my family?** If your family is eligible, you may receive up to one thousand (~~four~~) five hundred dollars per year in short-term intervention, funding to pay for necessary services not otherwise available.

(1) Short-term intervention funds can be authorized for a one-time only need or for an episodic service need that occurs over a one-year period.

(2) Short-term intervention funding cannot be used for basic subsistence such as food or shelter but is available for those specialized costs directly related to and resulting from your child's disability.

**AMENDATORY SECTION** (Amending WSR 04-22-068, filed 10/29/04, effective 11/29/04)

**WAC 388-825-254 Service need level rates.** (1) The department shall base periodic service authorizations on:

(a) Requests for family support services described in WAC 388-825-252 (2) and (5);

(b) Service need levels. The amount of SSP (state supplementary payment) available to an individual will be included when calculating the monthly allocation of state family support dollars.

(c) Availability of family support funding;

(d) Authorization by a review committee, in each regional office, which reviews each request for service;

(e) The amounts designated in subsection (2)(a) through (d) of this section are subject to periodic increase if vendor rate increases are mandated by the legislature.

(2) Service need level lid amounts as follows:

(a) Clients designated for service need level one (WAC 388-825-256) may receive up to (~~one thousand one hundred ninety-eight dollars per month~~) fifteen thousand four hundred dollars per year or (~~two thousand four hundred sixty-two dollars~~) twenty-nine thousand four hundred dollars per (~~month~~) year if the individual requires licensed nursing care in the home:

(i) If an individual is receiving funding through Medicaid Personal Care or other DSHS in-home residential support, the maximum payable through family support shall be (~~five hundred thirty-one~~) six thousand eight hundred dollars per (~~month~~) year;

(ii) If the combined total of family support services at this maximum plus in-home support is less than (~~one~~) six thousand (~~one~~) eight hundred (~~ninety-eight~~) dollars additional family support can be authorized to bring the total to (~~one~~) six thousand (~~one~~) eight hundred (~~ninety-eight~~) dollars per year.

(b) Clients designated for service need level two (WAC 388-825-256) may receive up to (~~four hundred seventy-two~~) six thousand dollars per (~~month~~) year if not receiving funding through Medicaid Personal Care:

(i) If an individual is receiving funds through Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be (~~two hundred sixty-five~~) three thousand four hundred dollars per (~~month~~) year;

(ii) If the combined total of family support services at this maximum plus in-home support is less than (~~four hundred seventy-two~~) six thousand dollars, additional family support can be authorized to bring the total to (~~four hundred seventy-two~~) six thousand dollars per year.

(c) Clients designated for service need level three (WAC 388-825-256) may receive up to (~~two hundred sixty-five dollars per month~~) three thousand four hundred dollars per year provided the individual is not receiving Medicaid personal care. If the individual is receiving Medicaid personal care or other DSHS in-home residential support service, the maximum receivable through family support shall be one (~~hundred thirty-three dollars per month~~) thousand seven hundred dollars per year; and

(d) Clients designated for service level four (WAC 388-825-256) may receive up to one (~~hundred thirty-three dollars per month~~) thousand seven hundred dollars per year family support services.



(3) The department shall authorize family support services contingent upon the applicant providing accurate and complete information on disability-related requests.

(4) The department shall ensure service authorizations do not exceed maximum amounts for each service need level based on the availability of funds.

**WSR 06-07-091**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-36—Filed March 15, 2006, 1:32 p.m., effective March 15, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend wildlife rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-31500P; and amending WAC 232-12-315.

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: Heavy snow continues in these counties and has forced deer and elk to lower elevations, where harassment by dogs has been observed. In order to protect deer and elk, it is necessary to allow officers to take dogs into custody, and if necessary destroy dogs. 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: March 14, 2006.

J. P. Koenings  
Director  
by Larry Peck

NEW SECTION

**WAC 232-12-31500Q Emergency for custody or destruction of dogs harassing deer or elk.** Effective immediately until further notice, an emergency is declared in the following Washington State Counties and it is lawful for Fish

and Wildlife Officers to take into custody or destroy, if necessary, any dog that is pursuing, harassing, attacking or killing deer or elk.

- (1) Chelan County
- (2) Douglas County
- (3) Ferry County
- (4) Kitittas County
- (5) Lincoln County
- (6) Okanogan County
- (7) Pend Oreille County
- (8) Spokane County
- (9) Stevens County
- (10) Yakima County

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-12-31500P	Emergency for custody or destruction of dogs harassing deer or elk. (05-268)
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**WSR 06-07-102**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-49—Filed March 15, 2006, 4:38 p.m., effective March 15, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000B; 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 two additional fishing periods for the winter season in Blind Slough. The select area fisheries (SAFE) are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. The extended time for the winter/spring of 2006 will allow for additional opportunity to harvest salmon originating from the select areas. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of January 26, 2006, and March 15, 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 1.

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

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

Date Adopted: March 15, 2006.

Evan Jacoby  
for Jeff Koenings  
Director

#### NEW SECTION

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

1. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

b) Dates:

Winter Season: 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays and 7:00 p.m. Sunday to 7:00 a.m. Mondays immediately through March 22, 2006

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 until June 16, 2006.

Only Blind Slough is open through March 22. After March 22, both Blind Slough and Knappa Slough are open.

During May 1 through June 16, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: 7-inch minimum mesh through March 22 and 8-inch maximum mesh thereafter. Monofilament nets are allowed. Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, shad. A maximum of three sturgeon (green or white in aggregate) may be

possessed or sold by each participating vessel during each open period.

2. Deep River Select Area

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

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 20 through June 16, 2006

c) Gear: 7-inch maximum mesh size through March 14, 8" maximum thereafter. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: salmon, sturgeon and shad. A maximum of three sturgeon (green or white in aggregate) may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area is unlawful. An exception to the rule would allow fishers to transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

**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 220-33-01000B Columbia River seasons below Bonneville. (06-46)

**WSR 06-07-113  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 06-50—Filed March 17, 2006, 1:37 p.m., effective March 20, 2006, 6:00 a.m.]

Effective Date of Rule: March 20, 2006, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100V; and amending WAC 220-52-071.

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 sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber 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: March 16, 2006.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-52-07100W Sea cucumbers.** Notwithstanding the provisions of WAC 220-52-071, effective 6:00 am March 20, 2006 until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 on Monday, Tuesday and Wednesday of each week. Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 only on March 20, 2006.

(2) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturdays and Sundays of each week, except by written permission from the Director.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. March 20, 2006:

WAC 220-52-07100V Sea cucumbers. (06-30)

**WSR 06-07-114**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-48—Filed March 17, 2006, 1:39 p.m., effective March 17, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-35000Y and 220-56-38000K; and amending WAC 220-56-350 and 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: Surveys indicate that increased clam populations at Scenic Beach, Fort Flagler, Illahee, and Point Whitney can support opened or longer seasons; surveys indicated that Dosewallips State Park clam populations can only support a shortened season. There is insufficient time to promulgate permanent rules. Surveys indicate that oyster populations on both beaches can support open or extended seasons. 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 2.

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

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

Date Adopted: March 16, 2006.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

**WAC 220-56-35000Z 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) Dosewallips State Park: Open May 15 until further notice.

(2) Fort Flagler State Park: Open April 1 until further notice.

(3) Illahee State Park: Open April 1 until further notice.

(4) Penrose Point State Park: Open through May 31.

(5) Point Whitney Tidelands: Open until further notice.

(6) Rendsland Creek: Open through May 31.

(7) Scenic Beach State Park: Open April 15 through May 15.

(8) West Dewatto (DNR 44-A): Open through May 31.

NEW SECTION**WAC 220-56-38000L Oysters—Areas and seasons**

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

- (1) Cushman Park: Open May 1 through May 31.
- (2) Illahee State Park: Open April 1 until further notice.
- (3) Penrose Point State Park: Open through May 31.
- (4) Scenic Beach State Park: Open April 15 through May 15.
- (5) Sequim Bay State Park: Open until further notice.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-35000Z	Clams other than razor clams—Areas and seasons. (06-22)
WAC 220-56-38000L	Oysters—areas and seasons. (06-22)

**WSR 06-07-116  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 06-51—Filed March 17, 2006, 4:00 p.m., effective March 17, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600I; 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: 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: March 17, 2006.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-52-04600M Coastal crab seasons.** Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful for commercial fishers to fish for or take crab for commercial purposes, or place gear, in the following areas during the periods indicated:

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

Closed: Immediately/Open: 8:00 a.m. March 29, 2006

The Dungeness crab fishery will be closed 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:**

Open: Immediately

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).

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

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

**Quileute:**

In the area from Sand Point to Destruction Island:

(1) The state fishery will remain closed in the SMA described as the marine waters within the following points:

- Northeast Corner; 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°40.50 W.
- Southeast Corner; 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 220-52-04600I Coastal crab seasons. (Order 06-05)

**WSR 06-07-161**  
**EMERGENCY RULES**  
**SECRETARY OF STATE**  
 (Elections Division)

[Filed March 22, 2006, 10:47 a.m., effective March 22, 2006]

Effective Date of Rule: Immediately.

Purpose: The purpose of this emergency rule is to implement the felon screening process required by RCW 29A.08.-520.

Citation of Existing Rules Affected by this Order: Amending WAC 434-324-106.

Statutory Authority for Adoption: RCW 29A.04.611.

Other Authority: RCW 29A.08.520.

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: RCW 29A.08.520 requires the office of the secretary of state to screen the statewide list of registered voters for felons quarterly, beginning the first quarter of 2006. The secretary of state's office will soon be notifying those felons that have been identified in the first screening. This rule establishes the process for notifying the felons, and the process that the county auditors must use if a felon disputes the pending cancellation of voter registration.

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

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

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

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

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

Date Adopted: March 22, 2006.

Sam Reed  
Secretary of State

**AMENDATORY SECTION** (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-106 Felony conviction—Secretary's quarterly comparisons (~~and pending cancellation notifications~~).** (1) Once a quarter, the secretary must perform comparisons with the Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies, as authorized in RCW 29A.08.520, to search for registration records of felons. The quarterly comparison must be performed prior to the first extraction or pull of absentee ballots for a primary, special, or general election. The secretary must create a list of matches by confirming that the first name, last name, ~~((and))~~ date of birth, and other identifying information match.

(2) The list of matches must be compared to information provided by the office of the administrator for the courts ~~((and))~~, the indeterminate sentence review board, the clemency and pardons board, and the governor to identify felons who have received certificates of discharge, orders restoring civil rights, certificates of restoration, or gubernatorial pardons ~~((for all felony convictions))~~. ~~((3))~~ The secretary must not cancel the voter registration record of a voter who has received a certificate of discharge, order restoring civil rights, certificate of restoration, or gubernatorial pardon for all felony convictions. The secretary must flag the voter registration record to prevent future cancellation based on these previous felony convictions.

~~((4))~~ (3) If there is no record of a certificate of discharge, order restoring civil rights, certificate of restoration, or gubernatorial pardon for each felony conviction, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in the poll book and must not receive an absentee ballot.

~~((5))~~ (4) The secretary must mail a notification letter to each felon whose status is pending cancellation. ~~((In addition to sending a copy of the notification letter to the auditor, the secretary must also send notification of the voter's pending cancellation status to the auditor through the election management system.))~~ The notification letter must be sent to the felon's last known registration mailing address indicating that his or her voter registration is about to be canceled. The ~~((form))~~ letter must contain language notifying the felon that ~~((if the pending cancellation status is in error, the felon))~~ he or she may contact the auditor's office to ~~((reconcile the error and))~~ correct the information or request a hearing if the felon status is not correct or the right to vote has been restored. The letter must also inform the felon that he or she may request a

provisional ballot for any pending elections. ~~((As outlined in RCW 29A.08.520, the form must also provide information on how the right to vote may be restored, as well as how to register to vote after the right to vote has been restored.))~~ The notification letter must contain substantially the following language:

Dear . . . . .,

According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled ~~((as outlined in the last paragraph of this letter))~~ or by a certificate of restoration issued by the governor.

Based on name ~~((and)),~~ date of birth, and other identifying information maintained in state voter registration records and felony conviction records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:

Felon's name  
Felon's date of birth  
County of conviction  
Date of conviction  
Case/cause number

No evidence was found to indicate that your civil rights lost as a result of this conviction were restored.

Your voter registration is pending cancellation. If you would like to dispute this finding, you have ~~((thirty))~~ 30 days from the postmark date on the envelope to provide documentation that this is incorrect or request a hearing ((by contacting)). You must contact:

County auditor  
County auditor's address  
County auditor's phone number  
~~((County auditor's e-mail address))~~

You may also request a provisional ballot for any election scheduled to occur prior to the resolution of your registration status.

If you do not contact the county elections department within 30 days to dispute ~~((this))~~ the finding ~~((within thirty days)),~~ your voter registration will be canceled.

Voting before the ~~((rights are))~~ right is restored is a class C felony ~~((RCW 29A.84.660)).~~ The right to vote may be restored by proof of one of the following for each felony conviction:

1. A certificate of discharge, issued by the sentencing court ~~((RCW 9.94A.637));~~
2. A court order restoring civil right, issued by the sentencing court ~~((RCW 9.92.066));~~
3. A final ~~((order of))~~ discharge and restoration of civil rights, issued by the indeterminate sentence review board ~~((RCW 9.96.050));~~ or
4. A certificate of restoration, issued by the ~~((governor (RCW 9.96.020)))~~ clemency and pardons board; or
5. A pardon, issued by the governor.

Further information about how to get the right to vote restored may be found at ~~((www.secstate.wa.gov/elections/restoring.aspx))~~ www.secstate.wa.gov/elections/faq.aspx.

Sincerely,

~~((.....))~~ Elections Division  
Office of the Secretary of State

The secretary must provide an explanation of the requirements for restoring the right to vote. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(5) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(6) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's civil rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation based on the same felony conviction.

(7) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(8) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence, sufficient to prove the felony conviction by clear and convincing evidence. It is not necessary that the copy of the document be certified. The prosecuting attorney must make a diligent search of the court file to confirm that no certificate of discharge or order restoring civil rights has been issued by the sentencing court.

(9) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the

voter registration record to prevent future cancellation based on the same felony conviction.

(10) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The prosecuting attorney must also show by clear and convincing evidence that he or she made a diligent search of the court file to confirm that no certificate of discharge or order restoring civil rights has been issued by the sentencing court. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation based on the same felony convictions. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(11) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (7) through (10) of this section.