

WSR 06-10-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-80—Filed April 19, 2006, 4:34 p.m., effective April 19, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900V; 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: Allowing the use of motors in Swift Reservoir and Walupt Lake was omitted from the permanent rule filing. These are large lakes where motors are required for anglers to be effective in harvesting hatchery trout. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 19, 2006.

Jeff Koenings
 Director
 by Ronald McQueen
 for Larry Peck

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Swift Reservoir and Walupt Lake. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective April 29, 2006 until further notice in those waters of Swift Reservoir from markers approximately 3/8 mile below Eagle Cliff Bridge to bridge, selective gear rules in effect, except motors allowed.

(2) Effective April 29, 2006 until further notice in those waters of Walupt Lake, selective gear rules in effect, except motors allowed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900V Exceptions to statewide rules—Swift Reservoir and Walupt Lake. (06-79)

WSR 06-10-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-86—Filed April 25, 2006, 4:36 p.m., effective April 28, 2006, 12:01 a.m.]

Effective Date of Rule: April 28, 2006, 12:01 a.m.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

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

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

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

Date Adopted: April 25, 2006.

J. P. Koenings
 Director
 by Larry Peck

NEW SECTION

WAC 220-56-36000T Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. April 28, 2006 through 11:59 a.m. April 30, 2006, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. April 28, 2006 through 11:59 a.m. April 30, 2006, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

3. Effective 12:01 a.m. May 1, 2006 through 11:59 a.m. May 1, 2006, razor clam digging is allowed in Razor Clam Area 2 and that portion of Razor Clam Area 3 that is between the Copalis River (Grays Harbor County) and the southern boundary of the Quinault Indian Reservation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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

REPEALER

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

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

**WSR 06-10-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-85—Filed April 27, 2006, 11:23 a.m., effective May 1, 2006]

Effective Date of Rule: May 1, 2006.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-180, 220-56-195, 232-28-619, 232-28-620, and 232-28-621.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource

comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 0, Repealed 0.

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

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

Date Adopted: April 27, 2006.

Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-18000F Statewide salmon rules—2006 North of Falcon. Notwithstanding the provisions of WAC 232-28-620, in Area 2-1 from the opening date of adjacent ocean waters through July 31, chinook salmon must be not less than 24 inches in length, coho salmon must be not less than 16 inches, but there is no minimum size on other salmon. Effective August 1 through August 15, the minimum size for all salmon is 12 inches in length, except no minimum size for Atlantic salmon.

NEW SECTION

WAC 220-56-19500Q Closed saltwater salmon areas—2006 North of Falcon. Notwithstanding the provisions of WAC 220-56-195: Commencement Bay: Those waters east of a line projected from the Sperry Ocean Dock to landfall below the Cliff House Restaurant on the north shore of Commencement Bay are closed June 1 through August 11.

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—2006 North of Falcon. Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2006 it is unlawful to violate the following provisions, provided that unless otherwise amended all permanent rules remain in effect:

(1) Baker River (Skagit Co.): Mouth to Highway 20 Bridge: Salmon: Open only July 1 through July 31, except closed from 12:01 a.m. July 6 through 2:00 p.m. July 7, and from 12:01 a.m. July 10 through 2:00 p.m. July 11. Non-buoyant lure restriction and night closure. Daily limit 2 sock-eye only.

(2) **Big Beef Creek (Kitsap Co.):** Waters within 100 feet of the Seabeck Highway NW Bridge closed to all fishing August 1 until further notice.

(3) **Bogachiel River (Clallam Co.), from mouth to Olympic National Park boundary:** Salmon: Open July 1 until further notice, from mouth to Highway 101 Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild adult coho and wild adult chinook.

(4) **Calawah River (Clallam Co.), from mouth to forks:** Salmon: Open July 1 until further notice from mouth to Highway 101 Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild adult coho and wild adult chinook.

(5) **Cascade River (Skagit Co.), from the mouth to the Rockport-Cascade Road Bridge:** Nonbuoyant lure restriction and night closure June 1 through July 9. Salmon: Open June 1 through July 9. Daily limit 2 hatchery chinook only.

(6) **Dickey River (includes all forks) (Clallam Co.):** Salmon: Open July 1 until further notice, from mouth to East Fork Dickey, including Olympic National Park. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild adult coho and wild adult chinook.

(7) **Elwha River (Clallam Co.), from mouth to Aldwell Lake Dam:** Closed to all fishing until further notice.

(8) **Nemah River, North Fork (Pacific Co.):** Closed to all fishing August 1 until further notice.

(9) **Nisqually River (Pierce Co.):**

(a) from mouth to Military Tank Crossing Bridge: Salmon: Open July 1 until further notice. Daily limit 6 fish of which no more than 2 may be adult salmon, release wild adult chinook.

(b) from Military Tank Crossing Bridge to four hundred feet below LaGrande Powerhouse: Nonbuoyant lure restriction and night closure August 1 until further notice.

(10) **Nooksack River, South Fork (Skagit/Whatcom Co.): from Saxon Road Bridge to Skookum Creek:** Closed to all fishing July 1 until further notice.

(11) **Puyallup River (Pierce Co.):** Salmon: Closed until further notice.

(12) **Quilcene River. (Jefferson Co.):** From Rodgers Street to Highway 101: Selective gear rules June 1 through August 15 and night closure August 16 until further notice. August 16 until further notice, only 1 single point barbless hook may be used. Salmon: Open only August 16 until further notice. Daily limit 4 coho. Only salmon hooked inside the mouth may be retained.

(13) **Quillayute River (Clallam Co.):** Salmon: Open immediately until further notice. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild adult coho and wild adult chinook.

(14) **Skagit River (Skagit/Whatcom Co.):**

(a) From the mouth to mouth of Gilligan Creek—Salmon: Closed until further notice.

(b) From the Dalles Bridge at Concrete to a line projected across the river at a point 200' upstream of the east bank of the Baker River—Salmon: Open July 1 through July 31, except closed from 12:01 a.m. July 6 through 2:00 p.m. July 7, and from 12:01 a.m. July 10 through 2:00 p.m. July 11. Daily limit 2 sockeye only.

(c) From the Highway 530 Bridge at Rockport to Cascade River—Nonbuoyant lure restriction and night closure June 1 until further notice. Salmon: Open June 1 through July 9. Daily limit 2 hatchery chinook only.

(15) **Skokomish River (Mason Co.), mouth to Highway 101 Bridge:** August 1 until further notice, terminal gear (hooks, weights, lures, or baits) and line must not be within 25' of tribal gillnets.

(16) **Skykomish River (Snohomish Co.):**

(a) From Lewis Street Bridge in Monroe to Wallace River—Salmon: Open June 1 through July 31. Daily limit 2 hatchery chinook only.

(b) From mouth to Lewis Street Bridge in Monroe—Salmon: Closed until further notice.

(17) **Snohomish River (Snohomish Co.), including all channels, sloughs, and interconnected waterways, but excluding all tributaries:** Salmon: Closed until further notice.

(18) **Sol Duc River (Clallam Co.):** Salmon: Open immediately until further notice from mouth to concrete pump station. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild adult coho and wild adult chinook.

NEW SECTION

WAC 232-28-62000F Coastal salmon seasons—2006 North of Falcon. Notwithstanding the provisions of WAC 232-28-620, effective May 1, 2006 until further notice, it is unlawful to fish for salmon in coastal waters except as provided in this section, provided that unless otherwise amended all permanent rules remain in effect:

(1) **Area 1** - Open July 3 until further notice, open Sunday through Thursday of each week, daily limit 2 salmon, not more than 1 of which may be a chinook, except release wild coho.

(2) **Areas 2, 2-1, and 2-2:**

(a) **Area 2** - Open July 3 until further notice, open Sunday through Thursday of each week, daily limit 2 salmon, not more than 1 of which may be a chinook, except release wild coho.

(b) **Area 2-1** - Open July 3 through July 31, open Sunday through Thursday of each week, daily limit 2 salmon, not more than 1 of which may be a chinook, except release wild coho. Open August 1 through August 15, daily limit 6 salmon, not more than two of which may be adult salmon. Open August 16 until further notice, daily limit 6 salmon, not more than three of which may be adult salmon, of which only 2 may be chinook.

(c) **Area 2-2** west of the Buoy 13 line:

(i) Open July 3 through July 31, open Sunday through Thursday of each week, daily limit 2 salmon, not more than 1 of which may be a chinook, except release wild coho.

(ii) Closed August 1 until further notice.

(d) Those waters within a line from the lighthouse 1 mile south of the south jetty to Buoy No. 2, then to Buoy No. 3, then to the tip of the north jetty then to the exposed end of the south jetty are closed August 1 until further notice.

(3) **Area 3** - Open June 30 until further notice, open Tuesday through Saturday of each week, Daily limit 2

salmon, not more than one of which may be a chinook, except release wild coho.

(4) Area 4:

(a) Open June 30 until further notice with the following area rules, limits, and species restrictions, open Tuesday through Saturday of each week, daily limit 2 salmon not more than one of which may be a chinook, except release wild coho.

(i) Effective July 1 through July 31 closed to salmon angling east of a true north/south line through Sail Rock.

(ii) Effective beginning August 1, release chinook east of the Bonilla-Tatoosh Line.

(iii) Effective beginning August 1, release chum.

NEW SECTION

WAC 232-28-62100T Puget Sound salmon seasons—2006 North of Falcon. Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128 and WAC 220-56-195, effective May 1, 2006 until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended all permanent rules remain in effect:

(1) Area 5 - Open July 1 until further notice - Daily limit 2 salmon, except release chum, wild chinook, and wild coho.

(2) Area 6 - Open July 1 until further notice - Daily limit 2 salmon, except release chum and wild coho, release wild chinook west of a true north-south line through Buoy #2 immediately east of Ediz Hook, and release all chinook east of a true north-south line through Buoy #2 immediately east of Ediz Hook.

(3) Area 7 - Open July 1 until further notice, daily limit 2 salmon, not more than one of which may be a chinook salmon, and effective beginning August 1 release chum and wild coho.

(4) Area 8-1 - Open August 1 until further notice, daily limit 2 salmon, except release chinook.

(5) Area 8-2:

(a) Effective June 2 through June 16 and June 18 until further notice - Waters adjacent to Tulalip Bay west of the line from Mission Point to Hermosa Point, and within 2,000 feet of shore, north of pilings at old Bower's Resort and south of the fishing marker 1.4 miles northwest of Hermosa Point, open Friday through 11:59 a.m. the following Monday of each week. Daily limit 2 salmon.

(b) Effective August 1 until further notice - All other waters of Area 8-2 open. Daily limit 2 salmon, except release chinook.

(6) Area 9:

(a) Salmon fishing open year-round from the Edmonds fishing pier. Daily limit 2 salmon, not more than one of which may be a chinook, and effective beginning August 1, release chum.

(b) Effective July 16 until further notice - All other waters of Area 9 open. Daily limit 2 salmon, except release chinook and chum.

(7) Area 10:

(a) Salmon fishing open year-round from the Elliott Bay public fishing pier, Seacrest pier, Waterman pier, Bremerton boardwalk, and Illahee State Park pier. Daily limit 2 salmon,

not more than one of which may be a chinook, and effective beginning August 1, release chum.

(b) Effective June 1 through June 30, closed, except open north of a line from Meadow Point to Point Monroe, release all salmon.

(c) Effective July 1 until further notice, all other waters of Area 10 open with the following area rules, limits, and species restrictions - Daily limit 2 salmon, except release chinook and effective beginning August 1, release chum.

(i) Shilshole Bay east of a line from Meadow Point to West Point is closed.

(ii) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge, south of a line projected true west from Battle Point, and west of a line projected true south from Point White. Daily limit 2 salmon, lawful to retain chinook, and effective August 1, release chum.

(iii) During the period July 1 through August 31, Elliott Bay east of a line from West Point to Alki Point is closed, except July 14 through August 20 - Open east of a line from Pier 91 to Duwamish Head Friday through Sunday of each week - Daily limit of 2 salmon, lawful to retain chinook, and release chum August 1 through August 20.

(iv) Terminal gear in waters of the East Duwamish Waterway between a line projected east along the path of SW Hanford Street on Harbor Island and a line projected east from the south tip of Harbor Island is restricted to bait suspended above the bottom from a float.

(8) Area 11:

(a) Salmon fishing open year-round from the Les Davis public fishing pier, Des Moines public fishing pier, Redondo public fishing pier, Dash Point dock, and Point Defiance Boathouse dock. Daily limit 2 salmon, not more than one of which may be a chinook.

(b) Effective June 1 until further notice - All other waters of Area 11 open. Daily limit 2 salmon. Except those waters east of a line projected from the Sperry Ocean Dock to landfall below the Cliff House Restaurant on the north shore of Commencement Bay are closed June 1 through August 11.

(9) Area 13:

(a) Salmon fishing open year-round from the Fox Island public fishing pier. Daily limit 2 salmon, not more than one of which may be a chinook, and effective beginning July 1, release wild coho.

(b) All other waters of Area 13, open May 1 until further notice with the following area rules, limits and species restrictions:

(i) May 1 through June 30 - Daily limit 2 salmon.

(ii) July 1 until further notice - Daily limit 2 salmon, except release wild coho.

(iii) Carr Inlet - those waters of Carr Inlet north of a line from Green Point to Penrose Point open to salmon angling July 1 through July 31, terminal gear restricted to fly fishing only, daily limit 2 hatchery coho.

WSR 06-10-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-87—Filed April 27, 2006, 2:57 p.m., effective May 1, 2006]

Effective Date of Rule: May 1, 2006.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. 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: April 27, 2006.

Evan Jacoby
 for Jeff Koenings
 Director

NEW SECTION

WAC 220-24-04000Z All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3 and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

May 1 through May 2, 2006;
 May 6 through May 9, 2006;
 May 13 through May 16, 2006;
 May 20 through May 23, 2006;
 May 27 through May 30, 2006;

June 3 through June 6, 2006;
 June 10 through June 13, 2006;
 June 17 through June 20, 2006;
 June 24 through June 27, 2006;

(2) The Cape Flattery and Columbia River Control Zones are closed.

(3) Landing and possession limit of 75 chinook per boat per entire open period for opening from May 1 through May 2.

(4) Landing and possession limit of 80 chinook per boat per entire open period for opening from May 6 through June 27.

Minimum size for chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. EEZ: and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude and west of 125°05'00" W longitude.

(8) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running north-east/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" West. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon, and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279 or faxing the information to (360) 902-2949 or E-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the

catch area, the species. The total number for each species and the total weight for each species including halibut.

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

WSR 06-10-033

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 27, 2006, 4:24 p.m., effective April 28, 2006]

Effective Date of Rule: April 28, 2006.

Purpose: DSHS is making changes to the language, clarifying the rules, increasing the spousal resource maximum from \$41,000 to \$41,943 effective July 1, 2005, and increasing the community spousal share maximum to \$99,540 effective January 1, 2006.

DSHS is clarifying that an individual retirement account (IRA) belonging to a community spouse is a countable resource when determining eligibility for long-term care (LTC) services; (Social Security Act Section 1924 supersedes Social Security income (SSI)-related rules).

Also, DSHS is amending this rule due to federal law change in the 2005 Deficit Reduction Act of 2005 (Public Law 109-171) regarding disqualification for long-term care assistance for individuals with home equity in excess of \$500,000 effective May 1, 2006.

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

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

Other Authority: 2005 Federal Deficit Reduction Act (DRA) Public Law 109-171; and Section 1924 of the Social Security Act (42 U.S.C. 1396r-5).

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

Reasons for this Finding: Conditions have changed that require the department to revise emergency rules filed as WSR 06-02-043. Congress recently adopted new standards for client available resources in P.L. 109-171 § 6104, which the state must adopt to remain eligible for federal Medicaid funding. This filing will continue the January 1, 2006, federal increase in the community spouse resource share included in WSR 06-02-043 while the department completes adoption of permanent rules.

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

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

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

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

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

Date Adopted: April 24, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

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

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

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

(a) Two thousand dollars for:

(i) A single client; or

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

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

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

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

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

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

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

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

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

(a) ~~((For an SSI-related client, the department reduces available resources by excluding resources described in WAC 388-475-0350 through 388-475-0550))~~ The department determines available resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 with the exception of WAC 388-475-0550(16) and WAC 388-475-0350(b). Clients applying for LTC services on or after May 1, 2006, and have an equity interest greater than five hundred thousand dollars in their primary residence, are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence;

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

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

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

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

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

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

(i) The institutionalized spouse; or

(ii) Both spouses.

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

(i) Either spouse; or

(ii) Both spouses.

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

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

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

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

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

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

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

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client will be required to provide verification of

the couple's combined countable resources held at the beginning of the current period of institutional status.

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

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

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

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

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

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

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

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

(i) The first regularly scheduled eligibility review; or

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

WSR 06-10-039

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 06-88—Filed April 28, 2006, 2:13 p.m., effective May 1, 2006, 6:00 a.m.]

Effective Date of Rule: May 1, 2006, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100H; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2006 state/tribal Puget Sound shrimp harvest management plans requires adoption of harvest seasons contained in this emergency rule. There is insufficient time to promulgate permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 28, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-52-05100I Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Marine Fish-Shellfish Management and Catch and Reporting Area 29 are open to harvest of all shrimp species from 6:00 a.m. May 1, 2006 until further notice.

(b) All waters of Shrimp Management Areas 1B, 1C, Crustacean Management Regions 2, 3, 4 and 6 outside the shrimp districts are open to the harvest of all non-spot shrimp species from 6:00 a.m. May 1, 2006 until further notice, except as provided for in this section:

i) In Marine Fish/Shellfish Management and Catch Reporting Area 22A, closed through June 15 in waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Lopez Island.

ii) Marine Fish/Shellfish Management and Catch Reporting Area 25D (Port Townsend Bay) is closed south of the 48.06' North latitude line, north of the 48.04' North latitude line and east of the 122.46' west longitude line.

iii) All waters of Catch Areas 23A-E, 23A-W and 23A-C are closed.

(d) The shrimp accounting week is Monday through Sunday.

(e) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC

220-52-075 and must also include the following additional information.

(i) The number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(2) Shrimp beam trawl gear:

Crustacean Management Region 3 outside of the shrimp districts is open immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. May 1, 2006:

WAC 220-52-05100H Puget Sound shrimp beam trawl fishery—Season (06-82)

**WSR 06-10-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-89—Filed April 28, 2006, 2:14 p.m., effective April 28, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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 rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottom fish, while reserving brood stock for future fisheries. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: April 28, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-44-05000K Coastal bottom fish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice: (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63 in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Vol. 71, No. 80, published April 26, 2006. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Evan Jacoby at (360) 902-2930.

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000J Coastal bottomfish catch limits. (05-28)

WSR 06-10-045

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 28, 2006, 4:27 p.m., effective May 1, 2006]

Effective Date of Rule: May 1, 2006.

Purpose: The department is proposing these amendments and new text to change transfer of asset rules for clients found eligible for long-term care (LTC) services. This change is due to the 2005 federal Deficit Reduction Act, (DRA). The new WAC section is entitled WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006. The department will be updating WAC 388-513-1330 to include a reference to WAC 388-513-1363 and 388-513-1364.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1330.

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

Other Authority: 2005 Federal Deficit Reduction Act (DRA), Public Law 109-171.

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 department must adopt the applicable language from the federal Deficit Reduction Act (P.L. 109-171) in order for the state to remain eligible for Medicaid funding.

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

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

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

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

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

Date Adopted: April 24, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC 388-450-0005(3), Income—Ownership and availability and WAC 388-475-0200, SSI-related medical;

(b) WAC 388-450-0085, Self-employment income—Allowable expenses;

(c) WAC 388-450-0210 (4)(b) and (e), Countable income for medical programs, and WAC 388-475-0750, SSI-related medical - Countable unearned income;

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

(e) WAC 388-513-1315 (15) and (16), Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a fair hearing.

(4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(5) If both spouses are either applying or approved for LTC services, then:

(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and

(b) Adds the separate income of each spouse respectively to determine available income for each of them.

(6) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(7) The department considers income not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the income to:

(a) The spouse; or

(b) A trust for the benefit of the spouse.

(8) The department evaluates the transfer of a resource described in subsection (6) according to WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366 to determine whether a penalty period of ineligibility is required.

NEW SECTION

WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006. This section describes how the department evaluates asset transfers made on or after May 1, 2006, by a client who is applying for or receiving Long Term Care (LTC) services. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period. Clients subject to asset transfer penalty periods are not eligible for LTC services. Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006. Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling the average daily private nursing facility rate or less in any month;

(b) The transfer of an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the client's home meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship, see subsection (13) for further instructions.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c);

(f) The transfer of an asset, if the transfer meets the conditions described in subsection (2), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(2) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(3) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the Medicaid state plan or the department's waived services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(4) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (3) as the transfer of an asset without adequate consideration.

(5) When evaluating the effect of the transfer of an asset made on or after May 1, 2006 on a client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following the transfer allowing for reporting requirement timeframes described in WAC 388-418-007; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1360 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of

the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of penalty period between the spouses is requested.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) An undue hardship exists when application of the transfer of assets provision would deprive the individual:

(a) Of medical care that would endanger an individual's health or life; or

(b) Of food, clothing, shelter, or other necessities of life; or

(c) Which provides for:

(i) Notice to recipients that an undue hardship exception exists;

(ii) A timely process for determining whether an undue hardship waiver will be granted; and

(iii) A process under which an adverse determination can be appealed.

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Amending the current rules and adding a new rule brings the rule in line with policy by requiring foster parents to report within certain timeframes to the department and law enforcement when a child goes missing from their care. Without these rules, foster parents would not have consistent requirements and timeframes for reporting children missing from foster care, which could threaten the health and safety of children placed in foster care by delaying the search efforts of both law enforcement and the department.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

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

Date Adopted: April 26, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

WSR 06-10-046
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed April 28, 2006, 4:29 p.m., effective May 1, 2006]

Effective Date of Rule: May 1, 2006.

Purpose: This emergency rule:

- Changes WAC 388-148-0010 to include the definition of "missing child."
- Changes WAC 388-148-0120 by removing subsection (3)(e) "runaways" from the WAC.
- Creates new WAC 388-148-0123 to address the requirements of foster parents to report to the department and to law enforcement when a child goes missing (this includes runaways).

Citation of Existing Rules Affected by this Order: Amending WAC 388-148-0010 and 388-148-0120.

Statutory Authority for Adoption: RCW 74.08.090 and 74.15.030, chapter 74.13 RCW.

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

AMENDATORY SECTION (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or

(2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

"Children" or **"youth,"** for this chapter, means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age and pursuing a high school, equivalent course of study (GED), or vocational program;

(3) Up to twenty-one years of age with developmental disabilities; or

(4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption.

"Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.

"Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.

"DCFS" means the division of children and family services.

"DDD" means division of developmental disabilities.

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

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Foster-adopt" means placement of a child with a foster parent(s) who intends to adopt the child, if possible.

"Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.

"Full licensure" means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.

"Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.

"Group receiving center" or **"GRC"** means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.

"Hearing" means the administrative review process.

"I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, including group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.

"Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

"Licensor" means:

(1) A division of licensed resources (DLR) employee at DSHS who:

(a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and

(b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.

(2) An employee of a child-placing agency who:

(a) Attests that foster homes supervised by the child-placing agency meets licensing requirements; and

(b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.

"Maternity service" as defined in RCW 74.15.020.

"Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

"Missing child" means:

(1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:

(a) The child's whereabouts are unknown; and/or

(b) The child has left care without the permission of the child's caregiver or CA.

(2) Children who are missing are categorized under one of the following definitions:

(a) "Taken from placement" means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detention is in violation of the court order;

(b) "Absence not authorized, whereabouts unknown" means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or

(c) "Absence not authorized, whereabouts known" means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an

agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Washington state patrol fire protection bureau" or **"WSP/FPB"** means the state fire marshal.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates a foster home, staffed residential home, and group facilities, including group homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

AMENDATORY SECTION (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

WAC 388-148-0120 What incidents involving children must I report? (1) You or your staff must report the incidents contained in WAC 388-148-0120(2), as soon as possible and in no instance later than forty-eight hours to your local:

- (a) Children's administration intake staff, and
- (b) The child's social worker or case manager.
- (2) The incidents to be reported include:
 - (a) Any reasonable cause to believe that a child has suffered child abuse or neglect;
 - (b) Any violations of the licensing or certification requirements where the health and safety of a foster child is at risk and the violations are not corrected immediately;
 - (c) Death of a child;
 - (d) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;
 - (e) Any use of physical restraint that is alleged improperly applied or excessive;
 - (f) Sexual contact between two or more children that is not considered typical play between preschool age children;
 - (g) Any disclosures of sexual or physical abuse by a child in care;
 - (h) Physical assaults between two or more children that result in injury requiring off-site medical attention or hospitalization;
 - (i) Physical assaults of foster parent or staff by children that result in injury requiring off-site medical attention or hospitalization;
 - (j) Any medication that is given incorrectly and requires off-site medical attention; or
 - (k) Serious property damage or other significant licensing requirement that is a safety hazard and is not immediately corrected or may compromise the continuing health and safety of children.
- (3) You or your staff must report the following incidents as soon as possible or in no instance later than forty-eight hours, to the child's social worker, if the child is in the department's custody or to the case manager if placed with a child-placing agency program:
 - (a) Suicidal/homicidal ideations, gestures, or attempts that do not require professional medical treatment;
 - (b) Unexpected health problems outside the anticipated range of reactions caused by medications, that do not require professional medical attention;
 - (c) Any incident of medication incorrectly administered;
 - (d) Physical assaults between two or more children that result in injury but did not require professional medical attention;
 - (e) ~~((Runaways;~~
 - (~~Ⓕ~~) Any emergent medical or psychiatric care that requires off-site attention; and
 - (~~(Ⓕ~~)) ~~(f)~~ Use of prohibited physical restraints for behavior management as described in WAC 388-148-0485.

(4) Programs providing care to medically fragile children who have nursing care staff on duty may document the incidents described in WAC 388-148-0120 (3)(b)(c) in the facility daily logs, rather than contacting the social worker or case manager, if agreed to in the child's ISSP.

NEW SECTION

WAC 388-148-0123 What are my reporting responsibilities when a child is missing from care? (1) As soon as you have reason to know a child in your care is missing as defined in WAC 388-148-0010, or has refused to return to or

remain in your care, or whose whereabouts are otherwise unknown, you or your staff are required to notify the following:

(a) The child's assigned social worker, if the child is in the department's custody;

(b) CA intake, if the social worker is not available or it is after normal business hours; or

(c) The case manager if the child is placed by a child-placing agency program.

(2) You or your staff are required to contact local law enforcement if the child is missing as defined in WAC 388-148-0010 within six hours. However, if one or more of the following factors are present, you must contact law enforcement immediately:

(a) The child has been, or is believed to have been, taken from placement as defined in WAC 388-148-0010;

(b) The child has been, or is believed to have been, lured from placement or to have left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily will place the child at severe risks;

(e) The child is pregnant or parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal ideations) that if not treated will place the child at severe risk;

(g) The child has a developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

After contacting local law enforcement, the Washington State Patrol's (WSP) Missing Children Clearinghouse must also be contacted and informed that the child is missing from care. The telephone number for the Clearinghouse is 1 (800) 543-5678.

(3) If the child leaves school or has an unauthorized absence from school, the caregiver should consult with the social worker to assess the situation and determine when law enforcement should be called. If any of the factors listed in subsections (2)(a) through (h) of this section are present, the caregiver and the social worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(4) The caregiver will provide the following information to law enforcement and to the social worker when making a missing child report, if available:

(a) When the child left;

(b) Where the child left from;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have precipitated the child's departure;

(e) Any possible places the child may go to;

(f) Any special physical or mental health conditions or medications that affect the child's safety;

(g) Any known companions who may be aware of and involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) A recent photo of the child.

(5) The caregiver should obtain the number of the missing person report and provide that number to CA staff.

WSR 06-10-054

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 1, 2006, 4:19 p.m., effective May 1, 2006]

Effective Date of Rule: Immediately.

Purpose: These rules are necessary to amend the rules implementing ESSB 6090, section 205 (1)(e), 2005-2007 conference budget (chapter 518, Laws of 2005), which established a flexible family support pilot program for families who are providing care and support for family members with developmental disabilities. The family support pilot program is funded through June 30, 2007. These amendments will allow the reimbursement to parents who have purchased necessary goods or services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-560.

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

Other Authority: Section 205 (1)(e), chapter 518, Laws of 2005; Title 71A RCW.

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

Reasons for this Finding: Emergency rules are needed [to] preserve the public general welfare to comply with the intent of the legislature's directive in section 205 (1)(e), chapter 518, Laws of 2005, to preserve and improve the welfare of families of persons with developmental disabilities by providing family support pilot program services. The original rules failed to allow reimbursement to parents who have purchased necessary goods or services that are not available through an existing contract.

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

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

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

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

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

Date Adopted: April 27, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-06-040, filed 2/23/06, effective 3/26/06)

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

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

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

(3) The department will contract directly with a service provider(s), or a parent for the reimbursement of goods or services purchased by the parent. FSP funding cannot be authorized for services or treatments determined by the department to be experimental.

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

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

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

(7) FSP will not pay for conference registrations.

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

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

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

WSR 06-10-071

RESCISSION OF EMERGENCY RULES

SECRETARY OF STATE

[Filed May 2, 2006, 3:03 p.m.]

The office of the secretary of state requests that the emergency rule filed as WSR 06-07-161 on March 22, 2006, be rescinded immediately.

Steve Excell
Assistant Secretary of State