

WSR 07-19-132
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed September 19, 2007, 11:42 a.m., effective September 19, 2007, 11:42 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities (DDD) has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act. These amendments also respond to the proposed order and settlement agreement under *Boyle v. Arnold-Williams* and incorporate the provisions of the letter of agreement between the state of Washington (office of financial management) and the Service Employees International Union (SEIU). Finally these rules are necessary to implement the recommendations in a June 2003 performance audit by the joint legislative audit and review committee.

Citation of Existing Rules Affected by this Order:

WAC	Effect of Rule
388-845-0001 - Definitions "DDD assessment" (new) "Family" (new) "Home" (new) "Individual support plan (ISP)" (new) "Legal representative" (new) "Necessary supplemental accommodation representative" (new) "Plan of care (POC)" (amended) "Providers" (amended) "Respite assessment" (amended)	Defines DDD assessment. Defines family. Defines home. Defines ISP. Defines legal representative. Defines necessary supplemental accommodation representative. Specifies that the POC remains in effect until the DDD assessment is administered and the ISP is developed. Clarifies that providers must meet all provider qualifications and are contracted with ADSA. Defines the respite assessment as an algorithm.
388-845-0015 (amended)	Eliminates reference to CAP waiver and changes tense to reflect current situation.
388-845-0025 (deleted)	Deletes section as conversion from CAP waiver is complete.
388-845-0030 (amended)	Corrects cross references and adds the ISP as an alternative to the POC.
388-845-0031 (new)	Clarifies that one cannot be enrolled in more than one HCBS waiver at the same time.
388-845-0035 (amended)	Clarifies that enrollment in a new or different HCBS waiver is not guaranteed and clarifies DDD's responsibilities.
388-845-0040 (amended)	Clarifies that DDD may limit capacity.
388-845-0041 (amended)	Adds the ISP as an alternative to the POC.
388-845-0045 (amended)	Clarifies that individuals may be enrolled from the statewide data base when there is capacity and funding for new waiver participants and revises "health and safety" to "health and welfare."
388-845-0050 (amended)	Adds reference to requests for enrollment in a different waiver.
399-845-0052 (new)	Defines the process for requests to be enrolled in a different waiver and DDD's notice requirement in accordance with the <i>Boyle</i> lawsuit.
388-845-0055 (amended)	Clarifies language concerning ongoing eligibility once one is enrolled in a waiver and changes the reference from the CARE assessment to the DDD assessment.
388-845-0060 (amended)	Clarifies when enrollment in a waiver can be terminated, adds a monthly monitoring plan as an alternative to receiving a waiver service as an eligibility condition, and adds the ISP as an alternative to the POC.
388-845-0070 (amended)	Specifies that DDD uses the DDD assessment as specified in chapter 388-828 WAC to determine if the client needs ICF/MR level of care.
388-845-0075 through 388-845-0096 (deleted)	Deletes these sections as the information is contained in chapter 388-828 WAC.
388-845-0100 (amended)	Defines the criteria for assignment to the DDD waiver with the minimum service package available to meet the health and welfare needs of the individual and eliminates the criteria use for conversion from the expired CAP waiver.
388-845-0105 (amended)	Adds the ISP as an alternative to the POC.
388-845-0110 (amended)	Adds the ISP as an alternative to the POC and ensures that the health and safety needs of an individual are met.
388-845-0111 (new)	Defines the limitations regarding who can provide waiver services.
388-845-0200 (amended)	Revises the source of the definition of waiver services available from the service plan to the POC or ISP.
388-845-0205 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0210 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.

WAC	Effect of Rule
388-845-0215 (amended)	Adds the ISP as an alternative to the POC; defines the yearly limits as those determined by the DDD assessment; and removes respite from aggregate services, creating a separate category.
388-845-0220 (amended)	Adds the ISP as an alternative to the POC.
388-845-0510 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.
388-845-0800 (amended)	Clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0820 (amended)	Clarifies that approval is required from the DDD regional administrator or designee, adds the ISP as an alternative to the POC, and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0900 (amended)	Adds the ISP as an alternative to the POC.
388-845-0910 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.
388-845-1300 (amended)	Revises the wording and clarifies the reference for personal care services.
388-845-1310 (amended)	Deletes reference to the obsolete children's comprehensive assessment and clarifies that the maximum number of hours of personal care is determined by the CARE assessment within the DDD service level assessment.
388-845-1505(5) (amended)	Clarifies the types of providers for children and corrects WAC cross reference.
388-845-1515 (amended)	Adds limitations to alternate living services within the CORE waiver and requires the initial authorization of residential habilitation services to have prior approval by the DDD regional administrator or designee.
388-845-1606 (deleted)	Deletes reference to exceptions to the requirements before July 2006.
388-845-1610 (amended)	Eliminates state operated living alternative (SOLA) and other certified supported living situations as settings where respite may be provided, and allows the respite provider to take the client into the community.
388-845-1615 (amended)	Corrects cross-references.
388-845-1620 (amended)	Clarifies that the DDD assessment determines how much respite may be received for the Basic, Basic Plus and CORE waivers, clarifies that prior approval is required from the DDD regional administrator or designee, requires prior approval to pay for more than eight hours in a twenty-four hour period in any setting other than the client's home or place of residence, allows the respite provider to take the client into the community, and specifies that DDD cannot pay for fees associated with the respite care.
388-845-1660 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-1710 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all skilled nursing services, and changes the agency responsible for determining the need for service and the right to require a second opinion from the department to DDD.
388-845-1800 (amended)	Defines specialized medical equipment and supplies, clarifies that these services cannot be available through Medicaid or the state plan, adds a cross reference to WAC 388-543-1000, and clarifies that these services are available in all four DDD HCBS waivers.
388-845-1810 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee, and changes the agency responsible for determining the need for the right to require a second opinion from the department to DDD.
388-845-1910 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all specialized psychiatric services.
388-845-2000 (amended)	Adds the ISP as an alternative to the POC.
388-845-2005 (amended)	Adds recreational therapists as a qualified provider of staff/family consultation and training.
388-845-2010 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-2200 (amended)	Adds the ISP as an alternative to the POC, and clarifies that transportation services are available only if the cost and responsibility for transportation is not already included in the provider's contract and payment.
388-845-2210 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-3000 (amended)	Specifies that service needs are determined through the DDD assessment, only identified health and welfare needs will be authorized for payment, the amount of respite care for the Basic, Basic Plus and CORE waivers is determined by the DDD assessment, and adds the ISP as an alternative to the POC.
388-845-3005 through 388-845-3050 (deleted)	Deletes these sections as they are contained in the DDD assessment and service planning process as defined in chapter 388-828 WAC.
388-845-3055 (amended)	Specifies that the ISP replaces the POC; clarifies that the POC remains in effect until the ISP is developed; specifies that the ISP must include identified health and welfare needs, and both paid and unpaid services approved to meet these identified health and welfare needs; and specifies that a signature or verbal consent by the client or legal representative is required on an initial, reassessment or review of the ISP.
388-845-3056 (new)	Specifies what actions DDD will take if an individual needs additional help in understanding the ISP.
388-845-3060 (amended)	Adds the ISP as an alternative to the POC, and specifies that a signature or verbal consent is required on an initial, reassessment or review of the ISP.
388-845-3061 (new)	Specifies that a change in the plan of care or ISP can be made immediately upon a verbal request prior to receiving a signature.
388-845-3062 (new)	Specifies who must sign or give verbal consent to the ISP and adds a reference to WAC 388-845-3056 if an individual needs assistance to understand the ISP.

WAC	Effect of Rule
388-845-3065 (amended)	Specifies that the plan of care remains in effect until it is replaced by the ISP and that the ISP is effective through the last day of the twelfth month following the effective date or until a new ISP is completed.
388-845-3070 (amended)	Changes plan of care to ISP; specifies that on an initial plan, DDD will be unable to provide waiver services if a signature or verbal consent is not obtained, will not assume consent, and will follow the steps described in WAC 388-845-3056; specifies that for a reassessment or review, if a client is able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services through the end of the advance notice period and at the end of the advance notice period, DDD will assume consent and implement the new ISP without a signature or verbal consent; specifies that for a reassessment or review, if a client is not able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services in accordance with WAC 388-845-3056; and includes an additional cross-reference for appeal rights.
388-845-3075 (amended)	Adds the ISP as an alternative to the POC.
388-845-3095 (amended)	Clarifies the client's responsibility in paying toward the cost of waiver services.
388-845-4000 (amended)	Clarifies additional appeal rights under the waiver.
388-845-4005 (amended)	Clarifies appeal rights to include the provisions contained in the <i>Boyle</i> lawsuit.

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

Other Authority: Title 71A RCW.

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: These emergency rules extend the emergency rules filed as WSR 07-12-022 as the department proceeds to adopt the rules on a permanent basis. Permanent adoption will occur no later than October 31, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 6, Amended 50, Repealed 16; 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 6, Amended 50, Repealed 16.

Date Adopted: September 18, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

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

"CAP waiver" means the community alternatives program waiver.

"CARE" means the comprehensive assessment and reporting evaluation.

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

"DDD Assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

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

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

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

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

"Home" means your present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual Support Plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Legal Representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Necessary Supplemental Accommodation Representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

"Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs until the DDD assessment is administered and the individual support plan is developed.

"Providers" means an individual or agency who ~~((is licensed, certified and/or))~~ meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means ~~((a series of questions about you and your caregiver used to determine the amount of respite care available to you))~~ an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, or Core waiver.

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

"SSP" means state supplementary payment, a benefit administered by the department intended to augment an individual's SSI.

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070 ~~((through 388-845-0090)), 388-828-3060 and 388-828-3080.~~
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/MR facility.
- (6) You have a need for waiver services as identified in your plan of care or individual support plan.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

NEW SECTION

WAC 388-845-0031 Can I be enrolled in more than one HCBS waiver? You cannot be enrolled in more than one HCBS waiver at the same time.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria? (1) If you are not currently enrolled in a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

(2) If you are currently on a waiver and you have been determined to have health and welfare needs that can be met only by services available on a different waiver, you are not guaranteed enrollment in that different waiver.

(3) WAC 388-845-0041, 388-845-3080 and 388-845-3085 describe DDD's responsibilities to provide services.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0050 How do I request to be enrolled in a waiver? (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

~~((1))~~ (2) If you are assessed as meeting ICF/MR level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

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

NEW SECTION

WAC 388-845-0052 What is the process if I am already on a waiver and request enrollment onto a different waiver? (1) If you are already enrolled in a DDD HCBS waiver and you request to be enrolled in a different waiver DDD will do the following:

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If DDD determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If DDD determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your ISP.

(d) If DDD determines there is capacity on the waiver that is determined to meet your needs, DDD will place you on that waiver.

(2) You will be notified in writing of DDD's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, DDD will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide database.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0055 How do I remain eligible for the waiver? ~~((If you are already on a HCBS waiver.))~~ Once you are enrolled in a DDD HCBS waiver, you can remain eligible if you ~~((must))~~ continue to meet eligibility criteria in WAC 388-845-0030.

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

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b)(-)) or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) Your ~~((plan of care, CARE))~~ DDD assessment/reassessment ~~((and respite assessment/reassessment))~~ interview must be ~~((done))~~ administered in person and in your home. See WAC 388-828-1520.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0060 Can my waiver ~~((eligibility))~~ enrollment be terminated? DDD may terminate your waiver ~~((eligibility))~~ enrollment if DDD determines that:

(1) Your health and ~~((safety))~~ welfare needs cannot be met in your current waiver or for one of the following reasons:

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

~~((2))~~ (b) You ~~((no longer))~~ do not have an identified need for a waiver service(s) at the time of your annual plan of care or individual support plan;

~~((3))~~ (c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

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

~~((5))~~ (e) You choose to disenroll from the waiver;

~~((6))~~ (f) You reside out of state;

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

~~((8))~~ (h) You refuse to participate with DDD in:

~~((a))~~ (i) Service planning;

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

~~((c))~~ (iii) Accepting services agreed to in your plan of care or individual support plan as necessary to meet your health and ~~((safety))~~ welfare needs.

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

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

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

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

~~((11))~~ (k) Your needs exceed what can be provided under the CORE or community protection waiver as specified in WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDD enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0070 What determines if I need ICF/MR level of care? DDD determines if you need ICF/MR level of care based on your need for waiver services. To reach this decision, DDD uses ~~((its department approved))~~ the DDD assessment ((and/or other information)) as specified in ((WAC 388-845-0085)) chapter 388-828 WAC.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

~~(a) Services you received from DDD in October 2002 through September 2003; and~~

~~(b) Services you were authorized to receive in October, November and December 2003.~~

~~(2) If you are new to a waiver since April 1, 2004, assignment is based on your assessment and service plan.~~

~~(3) Additional criteria apply to the assignment to the community protection waiver)) If there is capacity, DDD will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDD assessment as described in chapter 388-828 WAC and the following criteria:~~

~~(1) For the Basic waiver:~~

~~(a) You must live with your family or in your own home;~~

~~(b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and~~

~~(c) You do not need out-of-home residential services.~~

~~(2) For the Basic Plus waiver, your health and welfare needs exceed the amount allowed in the Basic waiver or require a service that is not contained in the Basic waiver; and~~

~~(a) You are at high risk of out-of-home placement or loss of your current living situation; or~~

~~(b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility.~~

~~(3) For the Core waiver:~~

~~(a) You are at immediate risk of out-of-home placement; and/or~~

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

(4) For the Community Protection waiver, refer to WAC 388-845-0105.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

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

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

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

(e) You have committed one or more violent ~~((crimes))~~ offense, as defined in RCW 9.94A.030.

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

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

(a) Plan of care ~~((POC))~~ or individual support plan;

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

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

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

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

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

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

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

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

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

(b) The only recognized bordering cities are:

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

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

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

NEW SECTION

WAC 388-845-0111 Are there limitations regarding who can provide services? The following limitations apply to providers for waiver services:

(1) Your spouse cannot be your paid provider for any waiver service.

(2) If you are under age eighteen, your natural, step, or adoptive parent cannot be your paid provider for any waiver service.

(3) If you are age eighteen or older, your natural, step, or adoptive parent cannot be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation to and from a waiver service;

(c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

(d) Respite care if you and the parent who provides the respite care live in separate homes.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0200 What waiver services are available to me? Each of the four HCBS waivers has a different scope of service and your ~~((service))~~ plan of care or individual support plan defines the waiver services available to you.

AMENDATORY SECTION (Amending WSR 07-05-014, filed 2/9/07, effective 3/12/07)

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$6631 per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by ((respite)) <u>the DDD assessment</u>
	Personal care	Limits are determined by ((CARE)) <u>the CARE tool used as part of the DDD assessment</u>
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Emergency assistance is only for <u>aggregate services and/or employment/day program services</u> contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 07-05-014, filed 2/9/07, effective 3/12/07)

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<p>AGGREGATE SERVICES:</p> <ul style="list-style-type: none"> Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation 	May not exceed \$6192 per year on any combination of these services
	<p>EMPLOYMENT/DAY PROGRAM SERVICES:</p> <ul style="list-style-type: none"> Community access Person-to-person Prevocational services Supported employment 	May not exceed \$9691 per year
	<ul style="list-style-type: none"> Adult foster care (adult family home) Adult residential care (boarding home) 	Determined per department rate structure
	<p>MENTAL HEALTH STABILIZATION SERVICES:</p> <ul style="list-style-type: none"> Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services 	Limits determined by a mental health professional or DDD

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Personal care	Limits determined by the CARE <u>tool used as part of the DDD assessment</u>
	Respite care	Limits are determined by ((respite)) the <u>DDD assessment</u>
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for <u>aggregate services and/or employment/day program services</u> contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	<ul style="list-style-type: none"> Behavior management and consultation Community guide Community transition Environmental accessibility adaptations 	Determined by the Plan of Care or <u>individual support plan</u> , not to exceed the average cost of an ICF/MR for any combination of services
	Occupational therapy ((Respite care))	
	Sexual deviancy evaluation	
	Skilled nursing	
	Specialized medical equipment/supplies	
	Specialized psychiatric services	
	Speech, hearing and language services	
	Staff/family consultation and training	
	Transportation	
	Residential habilitation	
	<ul style="list-style-type: none"> Community access Person-to-person Prevocational services Supported employment 	

CORE WAIVER	SERVICES	YEARLY LIMIT
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care <u>Respite care</u>	((Limited)) <u>Limits determined by the CARE tool used as part of the DDD assessment</u> <u>Limits are determined by the DDD assessment</u>

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy	Determined by the Plan of Care or <u>individual support plan</u> , not to exceed the average cost of an ICF/MR for any combination of services
	Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation	

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Person-to-person Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

- (1) Prior ~~((authorization))~~ approval by the DDD regional administrator or designee is required based on a reassessment of your plan of care or individual support plan to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve

months based on the effective date of your current plan of care ~~((POC))~~ or individual support plan;

(3) Emergency assistance services are limited to the ~~((scope of services in your))~~ aggregate services and employment/day program services in the Basic and Basic Plus waivers;

(4) Emergency assistance may be used for interim services until:

- (a) The emergency situation has been resolved; or
- (b) You are transferred to alternative supports that meet your assessed needs; or
- (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

(1) ~~((Prior approval by DDD is required))~~ Environmental accessibility adaptations require prior approval by the DDD regional administrator or designee.

(2) Environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1300 What are personal care services? Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks ~~((as defined in WAC 388-106-0010, personal care services))~~.

These services are available in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for Medicaid personal care in chapters 388-106 and 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE) ~~((or children's comprehensive assessment))~~.

(2) The maximum hours of personal care you may receive are determined by the ~~((approved department assessment for Medicaid personal care services))~~ CARE tool used as part of the DDD assessment.

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the CORE waiver? Providers of residential habilitation services for participants in the CORE waiver must be one of the following:

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

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

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

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

(5) Licensed and contracted group care homes, ~~((group training homes;))~~ foster homes, child placing agencies ~~((s))~~ or staffed residential homes ~~((or adult residential rehabilitation centers per WAC 246-325-0012))~~ per chapter 388-148 WAC.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

(a) Room and board;

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

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

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

(3) Alternative living services in the CORE waiver cannot:

- (a) Exceed forty hours per month;
- (b) Provide personal care or protective supervision.

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

- (a) Your spouse;
- (b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;
- (c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the DDD regional administrator or designee.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1610 Where can respite care be provided? (1) Respite care can be provided in the following location(s):

- ~~((1))~~ (a) Individual's home or place of residence;
- ~~((2))~~ (b) Relative's home;
- ~~((3))~~ (c) Licensed children's foster home;
- ~~((4))~~ (d) Licensed, contracted and DDD certified group home;
- ~~((5))~~ State operated living alternative (SOLA) and other DDD certified supported living settings;
- ~~((6))~~ (e) Licensed boarding home contracted as an adult residential center;
- ~~((7))~~ (f) Adult residential rehabilitation center;
- ~~((8))~~ (g) Licensed and contracted adult family home;
- ~~((9))~~ (h) Children's licensed group home, licensed staffed residential home, or licensed childcare center;
- ~~((10))~~ (i) Other community settings such as camp, senior center, or adult day care center.

(2) Additionally, your respite care provider may take you into the community while providing respite services.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

- (1) Individuals meeting the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- (4) Licensed and contracted adult family home;
- (5) Licensed and contracted adult residential care facility;
- (6) Licensed and contracted adult residential ~~((rehabilitation center))~~ treatment facility under ~~((WAC 246-325-012))~~ chapter 246-337 WAC;

(7) Licensed childcare center under chapter ~~((388-295))~~ 170-295 WAC;

(8) Licensed child daycare center under chapter ~~((388-295))~~ 170-295 WAC;

(9) Adult daycare centers contracted with DDD;

(10) Certified provider ~~((per))~~ under chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or

(11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs, adult day care.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

(1) ~~((If you are in the Basic or Basic Plus waiver, a respite care))~~ The DDD assessment will determine how much respite you can receive per ((WAC 388-845-3005 through 388-845-3050)) chapter 388-828 WAC.

(2) ~~((If you are in the CORE waiver, the plan of care (POC), not the respite assessment, will determine the amount of respite care you can receive.~~

~~((3))~~ Prior approval by the DDD regional administrator or designee is required:

(a) To exceed fourteen days of respite care per month; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).

~~((4))~~ (3) Respite cannot replace:

(a) Daycare while a parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

~~((5))~~ (4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

~~((6))~~ (5) Your caregiver cannot provide paid respite services for you or other persons during your respite care hours.

~~((7))~~ (6) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(7) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

(2) Sexual deviation evaluations require prior approval by the DDD regional administrator or designee.

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

(1) Skilled nursing services require prior approval by the DDD regional administrator or designee.

(2) ~~((The department))~~ DDD and the treating professional determine the need for and amount of service.

(3) ~~((The department))~~ DDD reserves the right to require a second opinion by a department-selected provider.

(4) ~~((Skilled nursing services provided as a mental health stabilization service require prior approval by DDD or its designee.~~

~~(5))~~ The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are ~~((services to help))~~ durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform ~~((with))~~ their activities of daily living; or ~~((to better participate in their environment. These services are available in all four HCBS waivers))~~

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable and nondurable medical equipment are defined in WAC 388-543-1000 and 388-543-2800 respectively.

(3) Also included are ~~((devices, controls, appliances, and))~~ items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of ~~((such items; and durable and nondurable medical equipment not available through Medicaid under the Medicaid state plan))~~ the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all four HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

(1) ~~((Prior approval by the department is required))~~ Specialized medical equipment and supplies require prior approval by the DDD regional administrator or designee for each authorization.

(2) ~~((The department))~~ DDD reserves the right to require a second opinion by a department-selected provider.

(3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the Medicaid state plan.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins are excluded.

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Registered counselor; ((~~or~~))
- (15) Certified dietician; or
- (16) Recreation therapist certified by the National Council for Therapeutic Recreation.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

(2) Staff/family consultation and training require prior approval by the DDD regional administrator or designee.

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care or individual support plan. This service is available in all four HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides ((~~the person~~)) you access to waiver services, specified by ((~~the~~)) your plan of care or individual support plan.

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

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

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

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

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

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

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

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

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

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

(11) Transportation services require prior approval by the DDD regional administrator or designee.

ASSESSMENT AND ((~~PLAN OF CARE~~)) INDIVIDUAL SUPPORT PLAN

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the ((~~ICF-MR level of care~~)) DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

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

(a) ((~~The ICF-MR level of care assessment identifies your need for waiver services~~)) You meet the eligibility requirements for ICF/MR level of care.

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

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

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3055 What is a waiver ((~~plan of care (POC)~~) individual support plan (ISP))? (1) The ((~~plan of care~~) individual support plan (ISP) replaces the plan of care and is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs. Your plan of care remains in effect until a new ISP is developed.

(2) Your ((~~plan~~) ISP) must include:

(a) ((~~The services that you and DDD have agreed are necessary for you to receive in order to address your health and welfare needs as specified in WAC 388-845-3000~~) Your identified health and welfare needs;

(b) Both paid and unpaid services ((~~you receive or need~~) approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and

(c) How often you will receive each waiver service; how long you will need it; and who will provide it((~~;~~ and

(~~d~~) Your signature on).

(3) For an initial ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

((~~3~~)) (4) For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(5) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

NEW SECTION

WAC 388-845-3056 What if I need assistance to understand my plan of care or individual support plan? If you are unable to understand your plan of care or individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDD will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your plan of care or individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDD will continue to try to provide necessary supplemental accommodations in order to help you understand your plan of care or individual support plan.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3060 When is my plan of care or individual support plan effective? ((~~Your~~) (1) For an initial plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.

(2) For a reassessment or review of a plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.

NEW SECTION

WAC 388-845-3061 Can a change in my plan of care or individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, DDD can sign the plan of care or individual support plan and approve it prior to receiving your signature.

(1) Your plan of care or individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the plan of care or individual support plan.

NEW SECTION

WAC 388-845-3062 Who is required to sign or give verbal consent to the plan of care or individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the plan of care or individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the plan of care or individual support plan.

(3) If you need assistance to understand your plan of care or individual support plan, DDD will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3065 How long is my plan effective? (1) Your plan of care is effective ((~~through the last day of the twelfth month following the effective date~~) until it is replaced by your individual support plan.

(2) Your individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3070 What happens if I do not sign or verbally consent to my ((~~plan of care~~) individual support plan (ISP))? If DDD is unable to obtain the necessary signature ((~~on the plan of care from you or your legal representative~~) or verbal consent for an initial, reassessment or review of your individual support plan (ISP), DDD will take one or more of the following actions:

(1) ((~~DDD will continue providing services as identified in your most current POC for up to thirty days from the date~~)

you were notified of the plan to implement your most current POC.

(2) After thirty days, unless you file an appeal, DDD will assume consent and implement the new POC without your signature or the signature of your legal representative)) If this individual support plan is an initial plan, DDD will be unable to provide waiver services. DDD will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

(a) DDD will continue providing services as identified in your most current plan of care or ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, DDD will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, DDD will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ((POC)) ISP.

((4)) (5) Your appeal rights are in WAC 388-845-4000 and WAC 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

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

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

(a) If you have nonexempt income that exceeds the cost of your waiver services, you may keep the difference.

(b) If you are eligible for SSI, you pay only for room and board.

(c) If you are not eligible for SSI, you may be required to participate towards the cost of your waiver services in addition to your facility room and board rate)) You are required to pay toward board and room costs if you live in a licensed facility or in a companion home as room and board is not considered to be a waiver service.

(2) You will not be required to pay towards the cost of your waiver services if you receive SSI.

(3) You may be required to pay towards the cost of your waiver services if you do not receive SSI. DDD determines what amount, if any, you pay in accordance with WAC 388-515-1510.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4000 What are my appeal rights under the waiver? ((You have)) In addition to your appeal rights under WAC 388-825-120, you have the right to appeal the following decisions:

(1) ((Any denial, reductions, or termination of a service.

(2) A denial or termination of your choice of a qualified provider.

(3) Your termination from waiver eligibility.

(4)) Disenrollment from a waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.

(2) A denial of your request to receive ICF/MR services instead of waiver services; or

(3) A denial of your request to be enrolled in a waiver, subject to the limitations described in WAC 388-845-4005.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? ((You do not have an appeal right to a denial to be enrolled in a waiver)) (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide database because you do not need ICF/MR level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to DDD's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs.

(3) If DDD determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDD determines there is not capacity to enroll you on a different waiver.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-0025

Does this change in waivers affect the waiver services I am currently receiving?

WAC 388-845-0075	How is a child age twelve or younger assessed for ICF/MR level of care?
WAC 388-845-0080	What score indicates ICF/MR level of care if I am age twelve or younger?
WAC 388-845-0085	If I am age twelve or younger, what if my score on the current needs assessment does not indicate ICF/MR level of care?
WAC 388-845-0090	How is a person age thirteen or older assessed for ICF/MR level of care?
WAC 388-845-0095	What score indicates ICF/MR level of care if I am age thirteen or older?
WAC 388-845-0096	If I am age thirteen or older, what if my score on the current needs assessment does not indicate the need for ICF/MR level of care?
WAC 388-845-1606	Can DDD approve an exception to the requirements in WAC 388-845-1605?
WAC 388-845-3005	What is the waiver respite assessment?
WAC 388-845-3010	Who must have a waiver respite assessment?
WAC 388-845-3025	How often is this waiver respite assessment completed?
WAC 388-845-3030	What items are assessed to determine my respite allocation?
WAC 388-845-3035	How is the waiver respite assessment scored?
WAC 388-845-3040	When will the new respite assessment go into effect?
WAC 388-845-3045	How will I know the results of my respite assessment?
WAC 388-845-3050	What is the effective date of my respite allocation?

WSR 07-20-070
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 28, 2007, 3:43 p.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: The department is proposing the amendment of chapter 388-310 WAC, WorkFirst, to comply with the federal law changes under Deficit Reduction Act of 2005 (DRA), Public Law 109-171.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0500, 388-310-0600, 388-310-0900, 388-310-1000, 388-310-1050, 388-310-1100, 388-310-1400, 388-310-1500, and 388-310-1700.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, and 74.08.090.

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 technical changes in the language in the WAC amendments will comply with the requirements of the DRA. The department is required to have these changes in place October 1, 2007, in order to comply with the state of Washington's TANF verification plan only recently approved by Health and Human Services on September 14, 2007. The rule is being concurrently amended through the regular adoption process (WSR 06-21-055, filed October 13, 2006).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 9, 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 9, Repealed 0.

Date Adopted: September 27, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-08-044, filed 3/30/06, effective 6/1/06)

WAC 388-310-0500 WorkFirst—Individual responsibility plan. (1) What is the purpose of my individual responsibility plan?

The purpose of your individual responsibility plan is to give you a written statement that describes:

(a) What your responsibilities are; and

(b) Which WorkFirst activities you are required to participate in; and

(c) What services you will receive so you are able to participate.

(2) What is included in my individual responsibility plan?

Your individual responsibility plan includes the following:

(a) What WorkFirst activities you must do and the participation requirements for those activities including the amount of time you will spend doing the activities, a start and end date for each activity and the requirement to participate fully.

(b) Any other specific requirements that are tied to the WorkFirst work activity. For example, you might be required to learn English as part of your work experience activity or to provide proof of your employment hours.

(c) What services we will provide to help you participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.

(d) Your statement that you recognize the need to become and remain employed as quickly as possible.

(3) How is my individual responsibility plan developed?

You and your case manager will work together and use information gathered from your comprehensive evaluation (see WAC 388-310-0700) to develop your individual responsibility plan and decide what activities will be included in it. Then, your case manager will assign you to specific WorkFirst activities that will help you find employment.

(4) What happens after my individual responsibility plan is completed?

Once your individual responsibility plan is completed:

(a) You will sign and get a copy of your individual responsibility plan.

(b) You and your case manager will review your plan as necessary over the coming months to make sure your plan continues to meet your employment needs. You will sign and get a copy of your individual responsibility plan every time it is reviewed and changed.

(5) What should I do if I cannot go to a required WorkFirst appointment or activity because of a temporary situation outside of my control?

If you cannot participate because of a temporary situation outside of your control, you must call the telephone number shown on your individual responsibility plan on the same day you were to report to explain your situation. You will be given an excused absence. Some examples of excused absences include:

(a) You, your children or other family members are ill;

(b) Your transportation or child care arrangements break down and you cannot make new arrangements in time to comply;

(c) A significant person in your life died; or

(d) A family violence situation arose or worsened.

(6) What happens if I don't call in on the same day I am unable to attend to get an excused absence?

If you do not call in on the same day you are unable to attend to get an excused absence, it will be considered an unexcused absence.

If you exceed the number of unexcused absences allowed on your individual responsibility plan, without good cause, your case manager will begin the sanction process. (See WAC 388-310-1600 for more details.)

AMENDATORY SECTION (Amending WSR 06-08-044, filed 3/30/06, effective 6/1/06)

WAC 388-310-0600 WorkFirst—Job search. (1) What is job search?

Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

(a) Classroom instruction; and/or

(b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job-seekers(, and/or

(c) ~~Preemployment training; and/or~~

(d) ~~High-wage/high-demand training.~~

(2) What is preemployment training?

Preemployment training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) ~~Preemployment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete preemployment training.~~

(b) ~~You can find out about current preemployment training opportunities by asking your job service specialist, your case manager or staff at your local community and technical college.~~

(3) What is high-wage/high-demand training?

(a) ~~There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:~~

(i) ~~Information technology, health care or other professional technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional technical programs that meet high-wage high-demand criteria; and/or~~

(ii) ~~Certificate/degree completion: This option allows you to finish up the last year of any certificate or degree program in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.~~

(b) ~~For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy). There is no work requirement with either option for the twelve months of training time.~~

(c) ~~To qualify for HWHD training, you must also:~~

(i) ~~Meet all of the prerequisites for the course;~~

(ii) ~~Obtain the certificate or degree within twelve calendar months;~~

(iii) ~~Participate full-time in the training program and make satisfactory progress;~~

(iv) ~~Work with colocated ESD staff during the last quarter of training for job placement; and~~

(v) ~~Return to job search once you complete the educational program if still unemployed).~~

~~((4))~~ **(2) Who provides me with job search?**

You get job search from the employment security department or another organization under contract with WorkFirst to provide these services.

~~((5))~~ **(3) How long do I stay in job search?**

Periods of job search will start with a review of the work skills assessment portion of your comprehensive evaluation and may last up to twelve continuous weeks. Job search specialists will monitor your progress. By the end of the first four weeks, a job search specialist will determine whether you should continue in job search. Job search will end when:

(a) You find a full-time job; or

(b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or

(c) Your situation changes and the case manager changes the activities on your IRP to fit your new circumstances (see WAC 388-310-0400); or

(d) After fully participating in job search, and based on your experience in looking for work in the local labor market, it is determined that you need additional skills and/or experience to find a job; or

(e) You have not found a job at the end of the job search period.

~~((6))~~ **(4) What happens at the end of job search if I have not found a job?**

At the end of each job search period, you will be referred back to your case manager who will, at a minimum, review and update the DSHS portion of your comprehensive evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.

AMENDATORY SECTION (Amending WSR 06-08-048, filed 3/30/06, effective 5/1/06)

WAC 388-310-0900 WorkFirst—Basic education. (1) What is basic education?

Basic education is high school completion, classes to prepare for general equivalency diploma (GED), testing to acquire GED certification, adult basic education (ABE) or English as a second language (ESL) training. Basic education also includes supervised homework and study activities associated with the educational activity.

(2) When do I participate in basic education as part of WorkFirst?

You may participate in basic education as part of WorkFirst under any of the following circumstances:

(a) You are twenty years of age or older and your comprehensive evaluation shows you need this education to become employed or get a better job and:

(i) You are ~~(enrolled in an approved WorkFirst work activity for at least)~~ participating the equivalent of twenty hours or more per week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities; or

(ii) You have ~~(fully participated in job search without finding a job)~~ limited-English proficiency and you lack language skills that are needed to qualify for entry level jobs.

(b) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or GED certificate and you need this education in order to find employment.

(c) You will be required to be in high school or a GED certification program if you are a mandatory participant, sixteen or seventeen years old and you do not have a high school diploma or GED certificate.

~~(d) (Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season.~~

~~(e))~~ You are enrolled in the pregnancy to employment pathway and your comprehensive evaluation shows basic education would help you find and keep employment. (See WAC 388-310-1450.)

AMENDATORY SECTION (Amending WSR 06-08-048, filed 3/30/06, effective 5/1/06)

WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?

Vocational education is training that leads to a degree or certificate in a specific occupation, not to result in a baccalaureate or advanced degree unless otherwise indicated below, and is offered by an accredited:

(a) Public and private technical college or school;

(b) Community college; ~~((or))~~

(c) Tribal college; or

(d) For customized job skills training (formerly known as pre-employment training), community based organizations.

(2) Vocational education may include:

(a) Customized job skills training;

(b) High-wage/high-demand training;

(c) Supervised homework and study activities associated with the educational activity; and/or

(d) Remedial/developmental education, prerequisites, basic education and/or English-as-a-Second Language training deemed a necessary part of the vocational education program.

(3) What is customized job skills training?

Customized job skills training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Customized job skills training is an acceptable activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete customized job skills training.

(b) You can find out about current customized job skills training opportunities by asking your employment services counselor, your case manager or staff at your local community and technical college.

(4) What is high-wage/high-demand training?

(a) There are two types of high-wage/high-demand (HWD) full-time training options for TANF recipients to

complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care or other professional-technical programs. This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional-technical programs that meet high-wage/high-demand criteria; and/or

(ii) Certificate/degree completion. This option allows you to finish up the last year of any certificate or degree program, not to exceed a baccalaureate degree, in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy).

(c) To qualify for HWHD training, you must also:

(i) Meet all of the prerequisites for the course;

(ii) Obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with WorkFirst staff during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

((2)) (5) When can vocational education be included in my individual responsibility plan?

We may add vocational education to your individual responsibility plan for up to twelve months if:

(a) Your comprehensive evaluation shows you need this education to become employed or get a better job and you participate full time in vocational education or ~~((by combining))~~ combine vocational education with any approved WorkFirst work activity; or

~~((b))~~ (b) (Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on a recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season; or

~~((c))~~ (c) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand ~~((field, as determined by the employment security department))~~ program; or

~~((d))~~ (c) You have limited English proficiency and you lack job skills that are in demand for entry level jobs in your area; and the vocational education program is the only way that you can acquire ~~((the job))~~ these skills ~~((you need to qualify for entry level jobs in your area))~~ (because there is no available work experience, ~~((preemployment training))~~ community service or on-the-job training that can teach you these skills); or

(e) You are in the pregnancy to employment pathway and your comprehensive evaluation shows vocational education would help you find and keep employment. (See WAC 388-310-1450.)

~~((2)) (6) Can I get help with paying the costs of vocational education?~~

WorkFirst may pay for the costs of your vocational education, such as tuition or books, for up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

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

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

WAC 388-310-1050 WorkFirst—~~((Job skills))~~ Skills Enhancement training. (1) **What is ~~((job))~~ skills enhancement training?**

~~((Job skills))~~ Skills enhancement training (formerly known as job skills training) is training ~~((in specific skills directly related to employment, but not tied to a specific occupation. Job skills training programs are generally short term, but differ in what skills are taught and who provides the training-))~~ or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Skills enhancement training may include:

(a) Customized training programs to meet the needs of a specific employer;

(b) General education and training that prepares a person for employment to include vocational education and courses explicitly required for program entry;

(c) Basic education and English as a second language training when such instruction is focused on skills needed for employment, combined in a unified whole with job training or needed to enable the person to perform a specific job or engage in a specific job training program;

(d) Four-year bachelor degree programs at any state-certified college or university; and

(e) Supervised homework and study activities.

(2) Who may provide skills enhancement training?

The training may be offered by the following types of organizations that meet the WorkFirst program's standards for service providers:

(a) Community based organizations;

(b) Businesses;

(c) Tribal governments; or

(d) Public and private community and technical colleges.

~~((2)) (3) When can ~~((job))~~ skills enhancement training be included in my individual responsibility plan?~~

We may add ~~((job))~~ skills enhancement training in your individual responsibility plan if ~~((~~

~~((a))~~ you are ~~((working))~~ participating the equivalent of twenty or more hours a week in job search, vocational education, issue resolution, paid ~~((unsubsidized))~~ work or unpaid work~~((; or~~

~~((b))~~ You are working sixteen or more hours per week in a federal or state work-study position; or

~~((c))~~ You are working in a subsidized job, like a community jobs position, at least twenty hours per week; or

~~(d) Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on a recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season; or~~

~~(e) You lack job skills that are in demand for entry level jobs in your area, and the job skills training is short term and is combined with job search)) that meets the federal definition of core activities.~~

~~((3)) (4) Can I get help with paying the costs of ((job)) skills enhancement training?~~

WorkFirst may pay your costs, such as tuition or books, if ((job)) skills enhancement training is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 99-10-027, filed 4/28/99, effective 5/29/99)

WAC 388-310-1100 WorkFirst—Work experience.

(1) What is work experience?

Work experience (sometimes called WEX) is an activity for mandatory participants that will teach you the basics of holding down a job and give you a chance to practice or expand your work skills. Work experience teaches you these skills by assigning you to unpaid work with:

- (a) A private, nonprofit organization;
- (b) A community or technical college; ~~((or))~~
- (c) A federal, state, local or tribal government or district;

or

(d) Any entity providing an internship or practicum as described in WAC 388-310-1000 (2)(b).

(2) What happens when I am enrolled in a work experience activity?

When you are enrolled in a work experience activity:

(a) The organization, government or district that is supervising your work experience position must comply with all applicable state and federal health and safety standards while you are working there.

(b) You may be required to look for work on your own and must accept any paid employment you find that meets the criteria in WAC 388-310-1500.

(3) How long does a work experience assignment last?

Your case manager must review your work experience assignment if it lasts longer than six months. This review will determine whether you need more time to learn the skills and abilities that the work experience assignment was set up to teach you.

AMENDATORY SECTION (Amending WSR 05-13-030, filed 6/3/05, effective 7/4/05)

WAC 388-310-1400 WorkFirst—Community service. (1) What is community service?

Community service ~~((includes two types of activities for mandatory participants:~~

~~((a))) is unpaid work (such as the work performed by volunteer workers) that you perform for a charitable nonprofit~~

organization, federal, state, local or tribal government or district~~((; or~~

~~(b) An activity approved by your case manager which benefits you, your family, your community or your tribe. These activities may include)), including traditional activities that perpetuate tribal culture and customs.~~

(2) What ~~((type of community service(s))) other activities may be approved, even though they are not considered community service, because they benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?~~

The following types ~~((of community service)) activities may be approved, even though they are not considered community service, because they benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:~~

- (a) Caring for a disabled family member;
- (b) Caring for a child, if you are fifty-five years old or older and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);
- (c) Providing childcare for another WorkFirst participant who is doing community service;
- (d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW;
- (e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law);
- (f) Participating in the pregnancy to employment pathway; and/or
- (g) Job preparation.

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-310-1500 WorkFirst—Employment conditions. (1) If I am a mandatory participant, are there any limitations on the type of paid or unpaid employment I must accept?

If you are a mandatory participant, you must accept paid or unpaid employment (including any activity in which an employer-employee relationship exists) unless the employment:

- (a) Is not covered by industrial insurance (described in state law under Title 51 RCW) unless you are employed by a tribal government or a tribal private for-profit business;
- (b) Is available because of a labor dispute;
- (c) Has working hours or conditions that interfere with your religious beliefs or practices (and a reasonable accommodation cannot be made);
- (d) Does not meet federal, state or tribal health and safety standards; or
- (e) Has unreasonable work demands or conditions, such as working for an employer who does not pay you on schedule.

(2) Are there any additional limitations on when I can be required to accept paid employment?

You must accept paid employment unless the job or the employer:

(a) Pays less than the federal, state, or tribe minimum wage, whichever is higher;

(b) Does not provide unemployment compensation coverage (described in state law under Title 50 RCW) unless you:

(i) Work for a tribal government or tribal for-profit business; or

(ii) Are a treaty fishing rights related worker (and exempt under section 7873 of the Internal Revenue code);

(c) Requires you to resign or refrain from joining a legitimate labor organization; or

(d) Does not provide you benefits that are equal to those provided to other workers employed in similar jobs.

(3) How many hours of unpaid employment can I be required to perform?

You can be required to work a set number of hours of unpaid employment each month. The number of hours required will not be more than your TANF, SFA or GA-S cash grant plus Basic Food benefits, divided by the state (~~or federal~~) minimum wage (~~(, whichever is higher)~~).

(4) What safeguards are in place to make sure I am not used to displace currently employed workers?

The following safeguards are in place to make sure you are not used to displace currently employed workers:

(a) You cannot be required to accept paid or unpaid employment which:

(i) Results in another employee's job loss, reduced wages, reduced hours of employment or overtime or lost employment benefits;

(ii) Impairs existing contracts for services or collective bargaining agreements;

(iii) Puts you in a job or assignment, or uses you to fill a vacancy, when:

(A) Any other person is on lay off from the same (or very similar) job within the same organizational unit; or

(B) An employer ends the job of a regular employee (or otherwise reduces its workforce) so you can be hired.

(iv) Reduces current employees' opportunities for promotions.

(b) If a regular employee believes your subsidized or unpaid work activity (such as a community jobs or work experience position) violates any of the rules described above, this employee (or his or her representative) has the right to:

(i) A grievance procedure (described in WAC 388-426-0005); and

(ii) A fair hearing (described in chapter 388-02 WAC).

(5) What other rules apply specifically to subsidized or on-the-job training positions?

If you are in a subsidized or on-the-job training position:

(a) WorkFirst state agencies must stop paying your wage or on-the-job training subsidy to your employer if your employer's worksite or operation becomes involved in a strike, lockout or bona fide labor dispute.

(b) If your wage subsidy or on-the-job training agreement is ended (and we stop paying any subsidies to your employer) because you were used to displace another employee, it will be up to you and the employer to decide whether you can (or want to) keep working there.

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

WAC 388-310-1700 WorkFirst—Self-employment.

(1) What is self-employment?

When you work for yourself and do not have an employer, you are self-employed.

(2) When can I be deferred from job search to pursue self-employment?

(a) To be deferred from job search for self-employment, you must meet all the conditions below:

(i) You must be working at least thirty-two hours a week at your business;

(ii) Your business must generate income for you that is equal to the federal minimum wage (~~((state or federal, whichever is higher))~~) times thirty-two hours per week after your business expenses are subtracted.

(iii) Your case manager will refer you to a local business resource center, and they must approve your self-employment plan;

(b) If you do not meet all these conditions, you can still be self-employed, but you will also need to participate in job search or other WorkFirst activities.

(3) What self-employment services can I get?

If you are a mandatory participant and have an approved self-employment plan in your individual responsibility plan, you may get the following self-employment services:

(a) A referral to community resources for technical assistance with your business plan.

(b) Small business training courses through local community organizations or technical and community colleges.

(c) Information on affordable credit, business training and ongoing technical support.

(4) What support services may I receive?

If you have an approved self-employment plan in your individual responsibility plan all support services are available.

(5) Can I get childcare?

Childcare is available if you have an approved self-employment plan in your individual responsibility plan. (See chapter 388-290 WAC for working connections child care rules.)

WSR 07-21-001

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 07-245—Filed October 3, 2007, 3:18 p.m., effective October 3, 2007, 3:18 p.m.]

Effective Date of Rule: Immediately.

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

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

Statutory Authority for Adoption: RCW 77.04.140, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Adds two nights of chinook fishing in Zones 4-5 to target remaining upriver bright chinook. There are upriver bright impacts available for this fishery. The season is consistent with the 2005-2007 interim management agreement and the 2007 non-Indian salmon allocation agreement adopted for 2007. The regulation is consistent with compact action of July 26 and October 3, 2007. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 3, 2007.

J. P. Koenings
Director

NEW SECTION

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

1. AREA: SMCRA 1A, 1B, 1C

a. SEASON: Open until 7:00 p.m. October 3, 2007

b. GEAR: 6-inch maximum mesh size, unslackened floater gillnet. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Elokom-B, Abernathy, Cowlitz, Kalama-B, Lewis-B.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of seven white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes only mainstem fisheries. Green sturgeon retention is prohibited. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

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

a. SEASON: 7:00 a.m. to 7:00 p.m. October 4, 2007

b. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy, Washougal.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of seven white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes only mainstem fisheries. Green sturgeon retention is prohibited. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

3. AREA: SMCRA 1D, 1E

a. SEASON: 7:00 p.m. October 3 to 7:00 a.m. October 4, 2007

7:00 p.m. October 4 to 7:00 a.m. October 5, 2007

b. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Lewis-B, Sandy, Washougal.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of seven white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes only mainstem fisheries. Green sturgeon retention is prohibited. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by the department rule.

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

is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

4. Blind Slough/Knappa Slough Select Area.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 6:00 p.m. to 8:00 a.m. thereafter.

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

5. Tongue Point/South Channel Select Area.

a. OPEN AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh.

In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom.

In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

6. Deep River Select Area.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

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

7. ALLOWABLE SALES: Applies to all seasons stated in items 4-6: Salmon and sturgeon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only. Green sturgeon retention is prohibited.

wild steelhead on the spawning grounds and thus improving the natural production. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 3, 2007.

Phil Anderson
for Jeff Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000S Columbia River season below Bonneville. (07-240)

WSR 07-21-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-243—Filed October 3, 2007, 3:22 p.m., effective October 6, 2007]

Effective Date of Rule: October 6, 2007.

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: Large numbers of hatchery steelhead are expected to return to the waters above Priest Rapids Dam (11,637). The wild run is also expected to meet minimum spawning requirements. Only a relatively small number of the returning hatchery steelhead are needed for hatchery production. The recreational fishery will reduce the proportion of hatchery origin steelhead contributing to the adult spawning escapement, thereby minimizing impacts to wild steelhead spawners. This will increase the proportion of

NEW SECTION

WAC 232-28-61900H Exceptions to statewide rules—Columbia, Wenatchee, Methow, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions in the following waters:

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

(2) Columbia River from Wells Dam to 400 feet below Chief Joseph Dam - effective 12:01 a.m. October 6, 2007 until further notice. Night closure in effect. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with anchor (floy) tag attached.

(3) Columbia River from Rock Island Dam to Wells Dam - effective 12:01 a.m. October 22, 2007 until further notice. Night closure in effect. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with anchor (floy) tag attached.

(4) Wenatchee River - effective 12:01 a.m. October 22, 2007 until further notice. Mouth to Icicle Road. Selective gear rules. Night closure in effect. All species: Release all fish, except up to two adipose fin clipped steelhead per day may be retained and whitefish may be retained, beginning December 1. Release steelhead with anchor (floy) tag attached. Whitefish gear rules do not apply.

(5) Methow River - effective 12:01 a.m. October 6, 2007 until further notice. From the Hwy. 97 Bridge in Pateros upstream to the second powerline crossing, and from the first Hwy. 153 Bridge north of Pateros to the confluence with the Chewuch River, open. Closed waters from second powerline crossing to the first Hwy. 153 Bridge, Selective gear rules, except lawful to fish from motorized vessels. Night closure

in effect. All species: Release all fish, except up to two adipose fin clipped steelhead per day may be retained and whitefish may be retained, beginning December 1. Release steelhead with anchor (floy) tag attached. Whitefish gear rules do not apply.

(6) Okanogan River - effective 12:01 a.m. October 6, 2007 until further notice: Open. Closed from Lake Osoyoos Control Dam (Zosel Dam) downstream to one-quarter mile below railroad trestle. Selective gear rules, except lawful to fish from motorized vessels. Night closure in effect. Gamefish: Open to all gamefish downstream from Highway Bridge at Malott. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with anchor (floy) tag attached. Above Highway Bridge at Malott, open only for adipose fin clipped steelhead. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with anchor (floy) tag attached.

(7) Similkameen River - Mouth to the Railroad Trestle Bridge (located one mile upstream of Highway 7 Bridge in Oroville): - Open November 15, 2007 until further notice. Closed to all fishing from the Railroad Trestle Bridge upstream to Enloe Dam. Selective gear rules. Night closure in effect. All species: Release all fish, except up to two adipose fin clipped steelhead per day may be retained, and whitefish may be retained beginning December 1. Release steelhead with anchor (floy) tag attached. Whitefish gear rules do not apply.

WSR 07-21-011
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed October 5, 2007, 2:31 p.m., effective October 5, 2007, 2:31 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to allow the new department of early learning (DEL) to continue performing background clearances on and providing due process hearing procedures to child care providers after the department separated from the department of social and health services (DSHS) and became a new department as of July 1, 2006. The obsolete DSHS rules about background checks and hearings are being restored in new Title 170 WAC, which is the new DEL title. This is an extension to allow for more public comment and response.

Statutory Authority for Adoption: Section 203, chapter 265, Laws of 2006.

Other Authority: Chapter 265, Laws of 2006.

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: SSHB [2SHB] 2964 (chapter 265, Laws of 2006) created the DEL, effective July 1, 2006. The department had existed as division of child care and early learning, a part of DSHS. One function of the department is

to perform background checks on applicants for child care licenses and workers in child care. Another function is to process administrative hearings when an applicant for a child care license is denied the license or denied the clearance to work with children. With the creation of the DEL, child care background check and hearing rules in Title 388 WAC became obsolete for regulating child care. These new rules are needed to allow the new DEL to continue performing background checks and conducting hearings. This is vital to the health [and] safety of children in care. These rules are necessary to implement the legislature's intent in SSHB [2SHB] 2964. The DEL is in the process of making these rules permanent. Six public forums about the child care hearing and background check rules were held November and December 2006. A meeting was held in July 2006 with SEIU members. This extension is required to work with our AAGs to incorporate recommended changes.

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 72, 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 72, Amended 0, Repealed 0.

Jone M. Bosworth
Director

Chapter 170-03 WAC

DEL HEARING RULES

I. GENERAL PROVISIONS

NEW SECTION

WAC 170-03-0010 Purpose and scope. (1) Application. This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of early learning (DEL) and:

- Individuals or entities who are applicants for child care licenses or who are licensees of DEL and are adversely affected by a decision of DEL;

- Applicants for employment or employees of licensed child care agencies, child care providers, staff, volunteers, contracted providers, or other individuals who are required to meet background check standards before being authorized to care for or have unsupervised access to children in child care and who are disqualified by DEL;

Individuals receiving child care subsidies or on whose behalf child care subsidies are paid under the seasonal child

care program who are assessed an overpayment and who dispute the overpayment.

(2) **Relation to statutes and rules.** The rules of this chapter are intended to supplement RCW 43.20A.205 and its DEL successor, the statute governing hearing rights for licensees, section 311, chapter 265, Laws of 2006, the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH). If a provision of this chapter conflicts with a provision in any chapter containing a substantive rule, the provision in the chapter containing the substantive rule governs.

(3) **Relation to actions and rules of other agencies.** Actions of DEL sometimes rely in part on actions taken by other agencies, most notably the department of social and health services (DSHS), or are taken in conjunction with the actions of other agencies. For example, DSHS's division of licensed resources/child protective services (DLR/CPS) has statutory responsibility for investigating allegations of child abuse or neglect in licensed child care agencies. If DLR/CPS finds child abuse or neglect occurred in a child care facility, the person who is the subject of the finding will have a right to a hearing to challenge that finding under DSHS rules. If the subject is a licensed provider, the child care license may be revoked as a result of the circumstances and finding and the provider also would have a right to a hearing under DEL hearing rules. To the extent the child abuse or neglect case and the licensing case can be consolidated or combined in one hearing, they should be combined.

(4) **Application and amendments.** This chapter and any amendment to this chapter applies to cases pending at the time of the adoption of the rule or amendment, unless the amendment or rule-making order specifically states that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone in order to comply with the amendment, unless the amendment expressly says so.

Effective date: This chapter is effective July 3, 2006. In addition to cases arising on or after the effective date, this chapter applies to all pending DEL cases that have not gone to a full hearing before an ALJ by July 3, 2006, and to cases in which an initial decision is subject to review, but in which a petition for review has not been filed by July 3, 2006. This chapter does not apply to cases in which the hearing was held or begun prior to July 3, 2006, and/or which are awaiting initial decisions; Provided, Parts VIII and IX of this chapter, governing review of initial decisions, will apply to review of any initial decision mailed after the effective date of this chapter.

NEW SECTION

WAC 170-03-0020 Definitions. The following definitions apply to this chapter:

(1) **"Administrative law judge (ALJ)"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DEL employees or DEL representatives.

(2) **"Business days"** means all days except Saturdays, Sundays and legal holidays.

(3) **"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

(4) **"Case"** means the entire proceeding following the filing of a request for hearing with OAH.

(5) **"Continuance"** means a change in the date or time of a prehearing conference, hearing or deadline for other action.

(6) **"DEL" or "department"** means the department of early learning.

(7) **"Documents"** means papers, letters, writings, or other printed or written items.

(8) **"Ex parte contact"** means a written or oral communication with a judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(9) **"Final order"** means an order that is the final DEL decision.

(10) **"Good cause"** means a substantial reason or legal justification for failing to appear, to act, or respond to an action required under these rules.

(11) **"Hearing"** means a proceeding before OAH that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DEL. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 170 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

(12) **"Initial decision"** is a decision made by an ALJ that may be reviewed by a review judge.

(13) **"OAH"** means the office of administrative hearings.

(14) **"Party"** means a person or entity to whom a DEL action is directed that has a right to be involved in the hearing process. DEL also is a party, but is referred to in this chapter as DEL or the department.

(15) **"Representative"** means the person selected by a party to represent that party in an administrative hearing. **"Lay representative"** means a person or advocate who is assisting a party in presenting that party's case in administrative hearings. **"DEL representative"** means an employee of DEL, a DEL contractor, or an employee of the office of the attorney general authorized to represent DEL in an administrative hearing.

(16) **"Record"** means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(17) **"Review"** means the act of reviewing initial orders and making the final agency decision as provided by RCW 34.05.464.

(18) **"Review judge" or "DEL review judge"** means an attorney employed by DEL to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(19) "**Rule**" means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(20) "**Stay**" means an order temporarily halting the DEL decision or action.

(21) "**Words of command**" such as "should," "shall," and "must" are words that impose a mandatory obligation on a participant in the hearing process. The words "may" or "will" are used when referring to a discretionary act to be taken by an ALJ or review judge.

NEW SECTION

WAC 170-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to find out when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday or legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and legal holidays.

(4) The deadline ends at 5:00 p.m. on the last day.

II. HEARING RIGHTS AND REQUESTS

NEW SECTION

WAC 170-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing only if a law or DEL rule expressly gives that right and a hearing is timely requested.

(2) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DEL rule. In most cases, DEL will send a notice of adverse action or disqualification that gives specific information about how, where and when to request a hearing.

(3) A challenge to a DEL adverse action is heard in an administrative hearing by an administrative law judge (ALJ) employed by the office of administrative hearings (OAH). Not all actions of DEL may be challenged through the hearing.

(4) If a party requests a hearing, one will be scheduled.

(5) If DEL or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right. The ALJ will decide either:

(a) There is no right to a hearing and dismiss the case; or

(b) There is a right to a hearing and proceed with the hearing.

NEW SECTION

WAC 170-03-0050 Requesting a hearing. (1) A request for hearing must be made in writing. It can be made

by the party requesting the hearing or the party's representative.

(2) The hearing request should include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DEL action;

(c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party;

(d) A copy of the notice from DEL stating the adverse action.

(3) The request should be filed with OAH and served on DEL.

NEW SECTION

WAC 170-03-0060 Filing the request for hearing. (1) Filing is the act of delivering documents to OAH at the location listed in WAC 170-03-0070.

(2) The date of filing is the date documents are actually received by OAH during office hours.

(3) A party may file documents with OAH by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(4) A party cannot file documents by e-mail.

NEW SECTION

WAC 170-03-0070 Location of office of administrative hearings. (1) The office of administrative hearings (OAH) is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

(2) The address for the office of administrative hearings (OAH) is:

Office of Administrative Hearings

2420 Bristol Court S.W., 1st Floor

P.O. Box 42488

Olympia, WA 98504-2488

360-664-8717

360-664-8721 (fax)

Requests for hearing should be sent to the attention of Barb Cleveland, Executive Assistant.

NEW SECTION

WAC 170-03-0080 Service of notice and documents. (1) Service is the act of delivering a copy of documents to the opposing party. Service gives the opposing party notice of the request for hearing or other action. When a document is given to a party, that party is considered served with official notice of the contents of the document.

(2) A party may serve another party by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

- (c) Fax, if the party also mails a copy of the document the same day;
- (d) Commercial delivery service; or
- (e) Legal messenger service.
- (3) A party cannot serve documents by e-mail.
- (4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files a pleading (request for hearing), brief or other document with OAH or the review judge or when required by law.
- (5) Service is complete when:
 - (a) Personal service is made;
 - (b) Mail is properly stamped, addressed and deposited in the United States mail;
 - (c) Fax produces proof of transmission;
 - (d) A parcel is delivered to a commercial delivery service with charges prepaid; or
 - (e) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 170-03-0090 Proof of service. A party may prove that an opposing party was served with documents by providing any of the following:

- (1) A sworn statement by the person who served the document;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;
- (5) Proof of fax transmission; or
- (6) Acknowledgment by the party being served.

NEW SECTION

WAC 170-03-0100 Representation during the hearing process. (1) The party requesting the hearing may represent himself or herself or may have another person, except a DEL employee, act as the representative.

(2) The representative may be a friend, relative, community advocate, attorney, paralegal, or lay representative.

(3) The representative should provide OAH and the other parties with the representative's name, address, and telephone number. If the representative is an attorney or lay representative, the representative must file a written notice of appearance in the action. If the representative is not an attorney, the party must provide a written statement to DEL authorizing the release of information about the party to the representative.

(4) DEL may be represented by an employee of DEL, a DEL contractor, or an assistant attorney general.

III. INTERPRETER SERVICES

NEW SECTION

WAC 170-03-0110 The right to an interpreter in the hearing process. (1) If a party has limited English proficiency (LEP), OAH will provide an interpreter.

(2) If OAH is notified that a party is a limited English-speaking person, all notices concerning hearings must:

- (a) Be written in the party's primary language; or
- (b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

NEW SECTION

WAC 170-03-0120 Definitions. The following definitions apply to rules relating to interpreter services.

(1) **"Hearing impaired person"** means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

(2) **"Limited English proficient (LEP)"** includes limited English-speaking persons or other persons unable to communicate in spoken English because of a hearing impairment.

(3) **"Limited English-speaking (LES) person"** means a person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

NEW SECTION

WAC 170-03-0130 Interpreter qualifications. (1) OAH must provide a qualified interpreter to assist any person who:

- (a) Has limited English proficiency; and
 - (b) Is a party or witness in a hearing.
- (2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DEL employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

NEW SECTION

WAC 170-03-0140 Waiver of interpreter services. (1) An eligible party may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record.

(3) The ALJ must determine that the waiver has been knowingly and voluntarily made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the hearing.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

NEW SECTION**WAC 170-03-0150 Requirements that apply to the use of interpreters.** (1) Interpreters must:

- (a) Use the interpretive mode that the parties, the limited English proficient or hearing impaired person, the interpreter and the ALJ consider the most accurate and effective;
 - (b) Interpret statements made by the parties and the ALJ;
 - (c) Not disclose information about the hearing without the written consent of the parties; and
 - (d) Not comment on the hearing or give legal advice.
- (2) The ALJ must allow enough time for all interpretations to be made and understood.
- (3) The ALJ may videotape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION**WAC 170-03-0160 Requirements that apply to decisions involving limited English-speaking parties.** (1) When an interpreter is used at a hearing, the ALJ must explain that the decision will be written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost.

(2) Interpreters must provide a telephone number where they can be reached to the ALJ and to the LES party. This number must be included in any decision or order mailed to the parties.

(3) OAH or the review judge must mail a copy of a decision or order to the interpreter for use in oral translation.

IV. PREHEARING PROCEDURESNEW SECTION**WAC 170-03-0170 Notice of hearing.** (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference.

(2) The notice of hearing or prehearing conference will include:

- (a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;
 - (b) The name, mailing address, and telephone number of the ALJ, if known;
 - (c) The date, time, place, and nature of the hearing;
 - (d) The legal authority and jurisdiction for the hearing;
- and
- (e) The date of the hearing request.

(3) OAH also will send information with the notice of hearing stating:

(a) If a party fails to attend or participate in a prehearing conference or a hearing, that party may lose the right to a hearing and the ALJ may enter an order of default or an order dismissing the case.

(b) If a party needs a qualified interpreter because the appealing party or any witness has limited English proficiency, OAH will provide an interpreter at no cost.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for a party or witness.

(e) How to contact OAH if a party has a safety concern.

NEW SECTION

WAC 170-03-0180 Prehearing conferences. (1) A prehearing conference is a formal meeting that may be conducted by an ALJ before a full hearing. A prehearing conference may not be conducted in some cases. In others, more than one prehearing conference may be necessary.

(2) Either the ALJ or a party may request a prehearing conference, but the ALJ decides whether to hold a prehearing conference. OAH sends notice of the time and date of the conference to all parties.

(3) An ALJ may conduct the conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(4) Attendance of the parties and their representatives is mandatory. A party may lose the right to participate during the hearing if that party does not attend the prehearing conference.

(5) Additional prehearing conferences may be requested by the parties and/or set by the ALJ to address the procedural or other issues specific to the case.

NEW SECTION

WAC 170-03-0190 Purposes of prehearing conference. (1) The purposes of the prehearing conference are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time and place of the hearing;

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the DEL notice of adverse action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve the names and phone numbers of witnesses, and copies of all documents or other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DEL rule;

(k) Consider a motion for summary judgment or other motion; or

(l) Determine any other procedural issues raised by the parties.

NEW SECTION

WAC 170-03-0200 Prehearing order. (1) After the conference ends, the ALJ will send a prehearing order describing:

- (a) The decisions made or actions taken during the conference;
 - (b) Any changes to DEL's or other party's initial documents; and
 - (c) Any agreements reached.
- (2) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

NEW SECTION

WAC 170-03-0210 Assignment and challenge of assignment of administrative law judge. (1) OAH assigns an ALJ at least five business days before the hearing and discloses that assignment in writing to the parties. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing.

(2) A party may file a motion of prejudice against an ALJ under RCW 34.12.050 by:

(a) Sending a written motion of prejudice at least three business days before the hearing, and before the ALJ rules on a discretionary issue in the case.

(b) The motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(c) The party must send the request to the OAH field office where the ALJ works and send a copy of the request to all other parties or, if other parties are represented, to the representatives.

(3) The first timely request for a different ALJ is automatically granted. Any later request may be granted or denied by the chief ALJ or a designee.

(4) A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge by:

(a) Sending a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest or an ex parte contact.

(b) A party must send or deliver the petition to the judge assigned to the case and send a copy of the petition to all other parties or, if other parties are represented, to the representatives. The ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

V. LAWS APPLIED IN ADMINISTRATIVE HEARINGS

NEW SECTION

WAC 170-03-0220 Rules an ALJ or review judge must apply when making a decision. (1) ALJs and the review judge must first apply the DEL rules adopted in the Washington Administrative Code.

(2) If no DEL rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and published appellate court decisions.

NEW SECTION

WAC 170-03-0230 Challenges to validity of DEL rules. (1) Neither an ALJ nor a review judge may decide that a DEL rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DEL rule is raised during the hearing, the ALJ or review judge may allow argument for later court review.

NEW SECTION

WAC 170-03-0240 Amendment to DEL notice or party's request for hearing. (1) The ALJ must allow DEL to amend (change) the notice of a DEL action before or during the hearing to match the evidence and facts.

(2) If DEL amends its notice, it must put the change in writing and give a copy to the ALJ and the other parties.

(3) The ALJ may allow an appealing party to amend a hearing request before or during the hearing to conform with an amended DEL notice.

(4) If there is an amendment to either the DEL notice or the appealing party's request for hearing, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier DEL notice or from the appealing party's request for hearing.

(5) If the ALJ grants a continuance, OAH must send a new hearing notice at least seven business days before the new hearing date.

NEW SECTION

WAC 170-03-0250 Change of address. (1) A party must tell DEL and OAH, as soon as possible, when the party's mailing address or telephone number changes.

(2) If OAH and DEL are not notified of a change in a party's mailing address and either DEL or OAH continues to send notices and other important papers to the address stated in the file, the ALJ and DEL may assume that the documents were received.

NEW SECTION

WAC 170-03-0260 Continuances. (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agree to the continuance.

(a) If the parties agree to a continuance, the ALJ will grant the request, unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant or deny the continuance.

(4) If a continuance is granted, OAH will send written notice of the changed time and date of the hearing.

NEW SECTION

WAC 170-03-0270 Order of dismissal. (1) An order of dismissal is an order sent by the ALJ to end the hearing. The order is made by agreement of the parties, or because the party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(2) If a hearing is dismissed because the appealing party did not appear or refused to participate, the DEL decision stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

NEW SECTION

WAC 170-03-0280 Vacating an order of default or order of dismissal. (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal.

(a) A request to vacate an order must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was mailed. If no request is received within that deadline, the order becomes a final order.

(b) The request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(2) OAH will schedule a hearing on the request to vacate the order.

(3) At the hearing, the ALJ will receive evidence and argument from the parties on whether there is good cause for an order of default to be vacated.

(4) The ALJ will vacate an order of dismissal and reinstate the hearing if the defaulted party shows good cause or if the DEL representative agrees to waive the deadline.

(5) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

NEW SECTION

WAC 170-03-0290 Stay of DEL action. (1) Except as set forth in WAC 170-03-0300, at any point in the proceeding before OAH or the review judge, the appealing party may request that an ALJ or review judge stay (stop) a DEL action until there is a decision entered by the ALJ or review judge.

(2) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is

made for good cause. In finding good cause the ALJ must determine:

(a) The party requesting the stay is likely to prevail in the hearing on the merits;

(b) The party requesting the stay will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances of the case.

NEW SECTION

WAC 170-03-0300 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a license issued under chapter 265, Laws of 2006 when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) A licensee who contests suspension of a license by the department may obtain a stay of the effectiveness of that order only as set forth in this section.

(3) The licensee may request a stay by including such a request in the request for hearing or in a subsequent motion. The request for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based.

(4) Upon receipt of a request for a stay, the ALJ will schedule a hearing on the request. The hearing may be combined with a prehearing conference. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the ALJ may advance the hearing date on its own initiative or by request of the parties.

(5) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the licensing action;

(b) The licensee will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license.

(6) Economic hardship of itself shall be an insufficient reason for a stay of a suspension of a license.

(7) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a request for a stay, will expedite the hearing and decision on the merits.

(8) The decision on the request for the stay is subject to review by the review judge at the request of either DEL or the licensee. The request for review must be filed not later than seven days following the date the decision on the request for stay is mailed by OAH to the parties.

(9) A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.

VI. HEARINGS

NEW SECTION

WAC 170-03-0340 Conduct of hearings. (1) Hearings may be held in person or by telephone conference or other electronic means.

(2) All parties, their representatives and witnesses may attend the hearing in person or by telephone conference or other electronic means at the discretion of the ALJ.

(3) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served in advance of the hearing.

(5) All hearings must be recorded.

NEW SECTION

WAC 170-03-0350 Authority of the administrative law judge. (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing, provided that the ALJ's authority shall be limited to determining whether the sanction imposed or action taken by the department was warranted and/or justified under the evidence presented during the hearing. The ALJ shall not have authority to substitute or impose an alternative sanction, remedy or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits and/or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DEL rule; and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that:

(a) The waiver is necessary to avoid manifest injustice to the unrepresented party; and

(b) That the waiver would not prejudice any other party.

(5) The ALJ shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

NEW SECTION

WAC 170-03-0360 Order of the hearing. (1) At the hearing, the ALJ:

(a) Explains the rights of the parties;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing; and

(e) Notifies the parties of appeal rights.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

WAC 170-03-0390 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the ALJ.

(5) The ALJ may only consider admitted evidence to decide a case.

NEW SECTION

WAC 170-03-0400 Introduction of evidence into the record. (1) The ALJ may set a deadline before the hearing for

the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

- (a) They have good cause for missing the deadline; or
 - (b) The other parties agree to waive the deadline.
- (2) The ALJ may admit and consider hearsay evidence.

Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

- (3) The ALJ may reject evidence, if it:
 - (a) Is not relevant;
 - (b) Repeats evidence already admitted;
 - (c) Is from a privileged communication protected by law;

or

- (d) Is otherwise legally improper.

(4) Except in cases where the department's notice of adverse action alleges the person lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care, evidence regarding character or reputation shall not be admissible. In cases where such evidence is admissible, the ALJ shall exercise reasonable control over the number of character witnesses so as to avoid duplication of testimony and evidence and needless consumption of time.

NEW SECTION

WAC 170-03-0410 Objections to evidence.

(1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

(4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ has discretion to strike all testimony previously given by that witness on the proceeding.

NEW SECTION

WAC 170-03-0420 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter it into the record.

NEW SECTION

WAC 170-03-0430 Exhibits. (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

NEW SECTION

WAC 170-03-0440 Judicial notice. (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.

(2) An ALJ may consider and admit evidence by taking judicial notice.

(3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 170-03-0450 Witnesses. (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Witnesses may include:

- (a) The appealing party or a DEL representative;
- (b) Anyone a party or the ALJ asks to be a witness.
- (4) The ALJ decides who may testify as a witness.

(5) Unless DEL agrees, a current or former DEL employee may not be an expert witness against DEL if that employee was actively involved in the case while working for DEL.

NEW SECTION

WAC 170-03-0460 Requiring witnesses to testify or provide documents. (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

(2) ALJs, DEL, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf.

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena.

(b) There is no cost to prepare a subpoena, but a party may have to pay for:

- (i) Serving a subpoena;
- (ii) Complying with a subpoena; and
- (iii) Witness fees according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

NEW SECTION

WAC 170-03-0470 Serving a subpoena. (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 170-03-0480 Testimony. (1) Direct examination. All witnesses may be asked questions by the party that calls the witness to testify. Each witness:

(a) Must affirm or take an oath to testify truthfully during the hearing;

(b) May testify in person or by telephone;

(c) May request interpreters from OAH at no cost to the parties;

(d) May be subpoenaed and ordered to appear according to WAC 170-03-0460.

(2) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(3) If a party has a representative, only the representative, and not the party, may question the witness.

(4) The ALJ may also question witnesses.

NEW SECTION

WAC 170-03-0490 Burden of proof. (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden of proof.

NEW SECTION

WAC 170-03-0500 Equitable estoppel. (1) Equitable estoppel is a legal doctrine defined in case law that may pre-

vent DEL from taking some action against a party in a proceeding to challenge an overpayment notice issued by DEL.

(2) There are five elements of equitable estoppel that must be proved by clear and convincing evidence. All of the following elements must be proved:

(a) DEL made a statement or took action or failed to take action, which is inconsistent with its later claim or position regarding an overpayment.

(b) The appealing party relied on DEL's original statement, action or failure to act.

(c) The appealing party will be injured if DEL is allowed to contradict the original statement, action or failure to act.

(d) Equitable estoppel is needed to prevent a manifest injustice.

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel in subsection (2) of this section have been proved with clear and convincing evidence, DEL is stopped or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

WAC 170-03-0510 Closing the record. When the record is closed, no more evidence may be taken, without a showing of good cause. The record is closed:

(1) At the end of the hearing if the ALJ does not allow more time to send in evidence or argument; or

(2) After the deadline for sending in evidence or argument is over.

VII. INITIAL DECISION

NEW SECTION

WAC 170-03-0520 Timing of the ALJ's decision. (1) After the record is closed, the ALJ must write a hearing decision and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed.

NEW SECTION

WAC 170-03-0530 Contents of the initial decision. The ALJ initial decision must:

(1) Identify the hearing decision as a DEL case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result;

- (9) Explain how to request changes in the decision and the deadlines for requesting them;
- (10) State the date the decision becomes final; and
- (11) Include any other information required by law or DEL program rules.

NEW SECTION

WAC 170-03-0540 Finality of initial decision. If no one requests review of the initial order or if a review request is dismissed, the initial decision becomes the final decision of DEL twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

WAC 170-03-0550 Challenges to the initial decision. (1) If a party disagrees with an ALJ's initial decision because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 170-03-0560.

(2) If a party disagrees with the reasoning and result of an initial decision and wants it changed, the party must request review by the review judge as provided in WAC 170-03-0570 through 170-03-0620.

NEW SECTION

WAC 170-03-0560 Correcting clerical errors in ALJ's decisions. (1) A clerical error is a mistake that does not change the result or intent of the decision. Some examples of clerical error are:

- (a) Missing or incorrect words or numbers;
 - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or
 - (c) Math errors when adding the total of an overpayment.
- (2) A party may ask for a corrected ALJ decision by making the request in writing and sending it to the OAH office that held the hearing. A copy of the request must be sent to the other parties or their representatives.

(3) A request to correct a clerical error must be made within ten days of the date the decision was mailed to the parties by OAH.

(4) When asking for a corrected decision, a party must clearly identify the clerical error.

(5) When a party requests a corrected initial or final order, the ALJ must either:

- (a) Send all parties a corrected order; or
- (b) Deny the request within three business days of receiving it.

(6) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(7) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial decision by the review judge.

If a party wants to stay the DEL action until review of the initial order is completed, the party must request a stay from the review judge.

VIII. REVIEWNEW SECTION

WAC 170-03-0570 Appeal of the initial decision. (1) Review or appeal of the initial decision may occur when a party disagrees or wants a change in an initial order, other than correcting a clerical error.

(2) A party must request review of an initial order from the DEL review judge as provided in WAC 170-03-0580 through 170-03-0640.

(3) If more than one party requests review, each request must meet the deadlines in WAC 170-03-0580.

(4) The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed.

(5) Review does not include another hearing by the DEL review judge.

NEW SECTION

WAC 170-03-0580 Time for requesting review. (1) The review judge must receive the written petition for review on or before the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party both:

- (a) Asks for more time before the deadline expires; and
 - (b) Shows good cause for requesting more time.
- (3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The review judge receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) Good cause means a substantial reason or legal justification for failing to appear, to act, or respond to an action required under these rules.

NEW SECTION

WAC 170-03-0590 Petition for review. (1) A party must make the review request (petition for review) in writing and clearly identify the:

(a) Parts of the initial order with which the party disagrees; and

(b) Evidence supporting the party's position.

(2) The petition for review must be filed with the review judge and a copy sent to the other parties and their representatives.

(3) The review judge can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial decision:

Review Judge
Department of Early Learning
P.O. Box 45480
Olympia, WA 98504-5480
360-725-4665

(4) After receiving a party's review request, the review judge will send a copy to the other parties, their representatives and OAH.

NEW SECTION

WAC 170-03-0600 Response to petition for review.

(1) A party does not have to respond to the review request. A response is optional.

(2) If a party responds, that party must send the response so that the review judge receives it on or before the seventh business day after the date a copy of the petition for review was mailed to the party by the review judge.

(3) The responding party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the party must contact the review judge by the deadline in subsection (2) of this section and give a good reason.

(5) A review judge may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 170-03-0610 Decision process. (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to the review after the record is closed.

(3) The review judge only considers evidence given at the original hearing.

(4) The review judge will decide the appeal without oral argument, unless the review judge determines that oral argument is necessary for resolution of the appeal.

(5) The review judge enters a final order that affirms, changes, dismisses or reverses the initial order, or remands (returns) the case to OAH for further specified action.

NEW SECTION

WAC 170-03-0620 Authority of the review judge. (1)

The review judge has the same decision-making authority as an ALJ, but must consider the ALJ's opportunity to observe the witnesses.

(2) The review judge's decision is the final decision of the agency in the case.

IX. REVIEW OF THE FINAL DECISION

NEW SECTION

WAC 170-03-0630 Request for reconsideration. (1) If a party disagrees with the final decision issued by a review judge and wants it reconsidered, the party may ask the review judge to reconsider the decision because the party believes the review judge made a mistake.

(2) If a party asks for reconsideration of the final decision, the reconsideration process must be completed before judicial review is sought.

(3) A request for reconsideration must be made in writing and must clearly state the reasons why the party wants the final decision reconsidered.

(4) The review judge must receive the written reconsideration request on or before the tenth calendar day after the final decision was mailed by the review judge to the parties. The party requesting reconsideration must send a copy of the request to all parties or, if the parties are represented, to their representatives.

(5) If a reconsideration request is received by the review judge after the deadline, the final decision will not be reconsidered. However, the review judge may extend its deadline if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for the extension.

(6) After receiving a reconsideration request, the review judge will send a copy to the other parties and representatives giving them time to respond.

(7) If a party does not request reconsideration or ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final agency decision.

NEW SECTION

WAC 170-03-0640 Response to a request for reconsideration. (1) A party does not have to respond to a request. A response is optional.

(2) If a party responds, that party must send a response to the review judge by or before the seventh business day after the date OAH or the review judge mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or the review judge may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

NEW SECTION

WAC 170-03-0650 Ruling on request for reconsideration. (1) After the review judge receives a reconsideration request, within twenty calendar days the review judge must either:

- (a) Write a reconsideration decision; or
- (b) Send all parties an order denying the request.

(2) If the review judge does not send a reconsideration decision or an order denying the request within twenty days of receipt of the reconsideration request, the request is denied.

(3) The review judge decision is final when the reconsideration decision is mailed or the date the reconsideration request is denied.

NEW SECTION

WAC 170-03-0660 Judicial review. (1) Judicial review is the process of appealing a final order to a court.

(2) Any party, except DEL, may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date OAH or the review judge mails the final decision in the case.

(3) RCW 34.05.510 through 34.05.598 contains further details of the judicial review process.

Chapter 170-06 WAC

DEL BACKGROUND CHECK RULES

NEW SECTION

WAC 170-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL). The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or under DEL approval. Background checks are conducted to find and evaluate any history of criminal convictions, findings of abuse or neglect of children or other vulnerable persons, adverse licensing actions, or other information that raises concerns about an individual's character and suitability to care for or have unsupervised access to children in child care.

(2) This chapter applies to applicants for child care agency licenses, licensees, persons working in or living on the premises of a child care agency, and child care providers who are authorized by DEL to care for children. These rules apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to care for or to have unsupervised access to children after the effective date of this chapter.

(3) If any provision of this chapter conflicts with a provision relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(4) Effective date: These rules are effective July 3, 2006, and apply prospectively.

NEW SECTION

WAC 170-06-0020 Definitions. The following definitions apply to this chapter:

(1) **"Authorized"** or **"authorization"** means qualified by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(2) **"DEL"** or **"department"** means the department of early learning.

(3) **"Director's list"** means a list of crimes and civil adjudications, the commission of which disqualifies an individual from being authorized by DEL to care for or have unsupervised access to children in child care.

(4) **"Disqualified"** means DEL has determined that a person's background information prevents that person from being authorized by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(5) **"Unsupervised access"** means:

(a) An individual will or may have the opportunity to be alone with a child in care at any time for any length of time; and

(b) Neither the licensee, a qualified employee, nor a relative or guardian of the child is present.

NEW SECTION**WAC 170-06-0030 Reason for background checks.**

The department does background checks to help safeguard the health, safety and well-being of children in licensed child care agencies and in the care of DEL-approved providers. By doing background checks, the department reduces the risk of harm to children from caregivers who have been convicted of certain crimes or who have been found to have been a risk to children. The department's rules and state law require the evaluation of background information to determine the character, suitability and competence of persons who will care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0040 Background inquiries. (1) At the time of application for a license or for authorization to care for or have unsupervised access to children in child care, a completed background check form and finger print card, if required, must be submitted to the department for each person who will have unsupervised access to any child in care. This includes:

- (a) Each applicant for a license;
- (b) All staff of the licensed child care agency, whether they provide child care or not;
- (c) Assistants;
- (d) Volunteers;
- (e) Contracted providers; and
- (f) Each person living on the premises of a licensed facility who is sixteen years of age or older.

(2) Each person identified in this section must consent to and authorize the department to access his or her criminal history and any information contained in any records about the person that are maintained by the department of social and health services, including child protective services, adult protective services, the division of home and community services, the division of residential care services, and the division of licensed resources.

(3) When a licensee plans to add new staff, assistants, volunteers, or contracted providers, or when any person who is sixteen years old or older moves onto the premises, the licensee shall require each person to complete and submit to the licensee a criminal history and background check form that must be submitted to DEL for processing before the date of hire or the date the individual moves onto the premises, as applicable.

(4) A person who has not been formally authorized by DEL to care for or have unsupervised access to children in child care may not have unsupervised access to any child in care.

(5) The department will discuss the result of the criminal history and background check information with the licensee, when applicable.

NEW SECTION

WAC 170-06-0050 Department action following completion of background inquiry. After the department receives the background information it will:

(1) Compare the background information with convictions/actions posted on the DEL director's list of disqualifying convictions/actions. The complete list can be found on the DEL web site or by calling any DEL office.

(2) Review the background information using the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The crime will not be considered a conviction for the purposes of the department when it has been pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.

(e) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and shall include convictions or dispositions for crimes committed as either an adult or a juvenile. It shall also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(f) A person will not be authorized to have unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(g) A person who has a "founded" finding for child abuse or neglect will not be authorized to have unsupervised access to children during the administrative hearing and appeals process.

(3) Conduct a character, competence and suitability assessment of the applicant, licensee, staff member, assistant, volunteer, contracted provider, or anyone living on the premises of a child care facility, if the individual is not automatically disqualified by a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult, under the DEL director's list of disqualifying crimes and actions.

(4) Notify the licensee or child care provider whether or not the department is able to approve the applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility to care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0060 Additional information the department may consider. (1) Upon request, the licensee or any person who requests authorization to care for or to have unsupervised access to any child in care must provide to the department any additional reports or information it requests to assess the person's character, suitability and competence to have unsupervised access to children in care. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;

(c) Psychiatric evaluations; and

(d) Medical evaluations.

Any evaluation requested under this section must be by a DEL-approved evaluator and will be at the expense of the person being evaluated.

(2) The applicant licensee or the person being evaluated must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to and after the evaluation.

NEW SECTION

WAC 170-06-0070 Disqualification. (1) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed child care facility who has a background containing any of the convictions/actions posted on the DEL secretary's list of permanently disqualifying convictions/actions, shall be permanently disqualified from providing licensed child care or having unsupervised access to any child in care.

(2) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility who has a background containing any of the convictions posted on the DEL secretary's list of nonpermanent disqualifying convictions shall be disqualified from providing licensed child care or having unsupervised access to any child in care for five years after the conviction date.

(3) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility shall be disqualified from providing licensed child care or having unsupervised access to any child in care if there is background information that the person:

(a) Has been found to have committed child abuse or neglect, unless the department determines that the person does not pose a risk to a child's safety and well-being;

(b) Is the parent of a child who has been found to be a dependent child as defined in chapter 13.34 RCW unless the department determines that the person does not pose a risk to a child's safety and well-being;

(c) Abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult as defined in chapter 74.34 RCW, unless the department determines that the person does not pose a risk to a child's safety and well-being;

(d) Had a license denied or revoked from an agency that regulates care of children or vulnerable adults, unless the department determines that the person does not pose a risk to a child's safety and well-being.

(4) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing licensed child care or having unsupervised access to any child in care if:

(a) The licensee attempts to obtain a license by deceitful means, such as making false statements or omitting material information on the application;

(b) The staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility attempted to become employed, volunteer, or otherwise have unsupervised access to children by deceitful means, such as making false statements or omitting material information on

an application to work or volunteer at a licensed child care agency or to otherwise provide child care;

(c) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children are present or presented a risk of harm to any child in care; or

(d) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility has attempted, committed, permitted, or assisted in an illegal act on the premises of a home or facility providing care to children. For purposes of this subsection, a licensee attempted, committed, permitted, or assisted in an illegal act if he or she knew or should have known that the illegal act occurred.

(5) A licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing child care or having unsupervised access to any child in care if the person has background containing information other than conviction information that the department determines:

(a) Makes the person not of suitable character and competence or of sufficient physical or mental health to meet the needs of any child in care; or

(b) Places any person at a licensed child care facility at risk of harm.

NEW SECTION

WAC 170-06-0080 Notification of disqualification.

(1) The department will notify in writing the applicant, care provider, employer, or licensee if the individual is disqualified by the background check from being authorized to care for children or to have unsupervised access to children in child care.

(2) If the department sends a notice of disqualification, the applicant will not receive a license, contract, certification, or be authorized to have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0090 Administrative hearing to contest disqualification. (1) Any person seeking a license or employment with a licensed facility may request an administrative hearing to contest the department's decision process to disqualify him or her from having unsupervised access to any child in care. Provided, an individual shall not have the right to challenge a discretionary determination made pursuant to WAC 170-06-0070(3).

(2) Prospective volunteers, interns, contracted providers, or those seeking certification do not have the right to appeal the department's decision to disqualify them from having unsupervised access to any child in care.

(3) The employer or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.

(4) The administrative hearing will take place before an administrative law judge employed by the office of adminis-

trative hearings (chapter 34.05 RCW), pursuant to chapter 170-03 WAC.

NEW SECTION

WAC 170-06-0100 Request for administrative hearing. (1) Any person who has a right to contest a decision to deny a license or disqualify them from having unsupervised access to any child in care based on an evaluation of background check information must request a hearing within twenty-eight days of receipt of the decision.

(2) A request for a hearing must meet the requirements of chapter 170-03 WAC.

(3) Any decision by the department denying a license or disqualifying a person from having unsupervised access to any child in care is effective immediately upon notice and shall continue pending a final administrative decision on the merits.

NEW SECTION

WAC 170-06-0110 Limitations on challenges to disqualifications. (1) If the denial or disqualification is based on a criminal conviction, the appellant cannot contest the conviction in the administrative hearing.

(2) If the denial or disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the appellant cannot contest the finding if:

(a) The appellant was notified of the finding by DSHS and failed to request a hearing to contest the finding; or

(b) The appellant was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the denial or disqualification is based on a court order finding the appellant's child to be dependent as defined in chapter 13.34 RCW, the appellant cannot contest the finding of dependency in the administrative hearing.

WSR 07-21-012

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 07-242—Filed October 5, 2007, 2:56 p.m., effective October 5, 2007, 2:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-11500E and 220-56-11600E; and amending WAC 220-56-115 and 220-56-116.

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 omitted from the permanent rule filing. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 5, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-11500E Angling gear—Lawful and unlawful acts. Notwithstanding the provisions of WAC 220-56-115, effective immediately through October 31, 2007, it is unlawful to use forage fish jigger gear in waters of Duwamish waterway downstream from the First Avenue South Bridge to an east-west line through Southwest Hanford Street on Harbor Island parallel to Southwest Spokane Street where it crosses Harbor Island.

[NEW SECTION]

WAC 220-56-11600E Statewide saltwater hook rules. Notwithstanding the provisions of WAC 220-56-116, effective immediately through October 31, 2007, a non-buoyant lure restriction is no longer in effect in waters of the Duwamish waterway downstream from the First Avenue Bridge to an east-west line through Southwest Hanford Street on Harbor Island parallel to Southwest Spokane Street where it crosses Harbor Island.

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

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. November 1, 2007:

- WAC 220-56-11500E Angling gear—Lawful and unlawful acts.
- WAC 220-56-11600E Statewide saltwater hook rules.

**WSR 07-21-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-248—Filed October 5, 2007, 4:57 p.m., effective October 5, 2007, 4:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100N and 220-47-41100Q; and amending WAC 220-47-311 and 220-47-411.

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 surplus of chum salmon in Areas 7, 7A, indicates that an additional day of fishing is warranted and will still meet conservation goals for the areas. 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: October 5, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-31100P Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 7PM with use of recovery box; 7AM - 4:00PM without use of recovery box	10/11, 10/12

AREA	TIME	DATE
	7AM - 6PM with use of recovery box; 7AM - 3:15PM without use of recovery box	10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2
	7AM - 5PM with use of recovery box;	11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16
	7AM - 2:30PM without use of recovery box	
7B:	7AM 9/23	- 6PM 11/3
	7AM 11/5	- 4PM 11/9
	7AM 11/12	- 4PM 11/16
	7AM 11/19	- 4PM 11/23
	7AM 11/26	- 4PM 11/30
	8AM 12/3	- 4PM 12/7

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	7AM - 5PM	11/6
	7AM - 5PM	11/13
	7AM - 5PM	11/20
	7AM - 4PM	11/27
8A:	7AM - 7PM	Limited participation -two boats only; purse seine vessel CONFIDENCE, and purse seine vessel ARLINE (10/1, 10/8).
	7AM - 6PM	10/15, 10/22, 10/30, 11/1

AREA	TIME	DATE
6D: Skiff gill net only.	7 AM	- 7 PM

Note: In Area 6D, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	Noon	- Midnight; Use of recovery box required	10/11, 10/12, 10/17, 10/18, 10/19	6 1/4"
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AREA	TIME	DATE
	7AM - 5PM	11/7, 11/12, 11/14, 11/20
	7AM - 4PM	11/26, 11/28
8D:	7AM - 7PM	10/1, 10/8
	7AM - 6PM	10/15, 10/22, 10/30, 11/1
	7AM - 5PM	11/7, 11/12, 11/14, 11/20
	7AM - 4PM	11/26, 11/28
10, 11	7AM - 6PM	10/16, 10/23, 10/25
	7AM - 5PM	10/30, 11/6, 11/8, 11/13
	7AM - 4PM	11/20
12,	7AM - 6PM	10/22, 10/29, 10/31
12B:		
	7AM - 5PM	11/5, 11/12, 11/19
12C:	7AM - 5PM	11/13, 11/20
	7AM - 4PM	11/27

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 27 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, and prior to September 9 in Area 7B.

Chum salmon - prior to September 30 in Areas 7 and 7A.

Sockeye salmon at all times.

Pink salmon at all times.

All other saltwater and freshwater areas - closed.

NEW SECTION

WAC 220-47-41100R Gill net—Open periods. It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for in each respective fishing area:

DATE(S)	MINIMUM MESH
9/28, 10/1, 10/2, 10/3, 10/4, 10/5, 10/8, 10/9, 10/10, 10/11, 10/12, 10/15, 10/16, 10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26	5"

AREA	TIME		DATE(S)	MINIMUM MESH
	Noon	-	Midnight 10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2, 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16	6 1/4"

Note: In Areas 7 and 7A after September 30 but prior to October 20, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). It is unlawful to keep sockeye salmon in area 7, and 7A at all times.

7B:	6PM	-	8AM	NIGHTLY 9/21	5"
	7AM 9/23	-	8PM 10/27		5"
	7AM 10/28	-	8PM 11/3		6 1/4"
	7AM 11/5	-	4PM 11/9		6 1/4"
	7AM 11/12	-	4PM 11/16		6 1/4"
	7AM 11/19	-	4PM 11/23		6 1/4"
	7AM 11/26	-	4PM 11/30		6 1/4"
	8AM 12/3	-	4PM 12/7		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 6:00 PM on the first Friday in December. It is unlawful to keep sockeye salmon in area 7B at all times.

8:	7AM	-	7PM	11/5, 11/7, 11/9, 11/12, 11/14, 11/16, 11/19, 11/21, 11/23	6 1/4"
	7AM	-	6PM	11/26, 11/28, 11/30	6 1/4"
8A:	6PM	-	8AM	NIGHTLY 10/9	5"
	7AM	-	8PM	10/16, 10/18, 10/19	5"
	8AM	-	8PM	10/23, 10/25, 10/26, 10/29, 10/31, 11/2	6 1/4"
	7AM	-	7PM	11/6, 11/8, 11/9, 11/13, 11/15, 11/16, 11/21, 11/22, 11/23	6 1/4"
	7AM	-	6PM	11/27, 11/29, 11/30	6 1/4"
8D:	6PM	-	8AM	NIGHTLY 9/23, 9/25, 9/27, 9/30, 10/2, 10/4, 10/7, 10/9, 10/11	5"
	7AM	-	8PM	10/18, 10/19	5"
	8AM	-	8PM	10/25, 10/26, 11/1, 11/2	5"
	7AM	-	7PM	11/8, 11/9	5"
	7AM	-	7PM	11/15, 11/16, 11/21, 11/23	6 1/4"
	7AM	-	6PM	11/29, 11/30	6 1/4"
9A:	6AM 9/26		7PM 11/3		5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10, 11:	4PM	-	7AM	NIGHTLY 10/15	6 1/4"
	5PM	-	8AM	NIGHTLY 10/17, 10/18	6 1/4"
	4PM	-	7AM	NIGHTLY 10/22, 10/24	6 1/4"
	5PM	-	8AM	NIGHTLY 10/25	6 1/4"
	3PM	-	7AM	NIGHTLY 10/29	6 1/4"
	4PM	-	8AM	NIGHTLY 10/31, 11/1	6 1/4"
	3PM	-	7AM	NIGHTLY 11/5, 11/7	6 1/4"
	4PM	-	8AM	NIGHTLY 11/8	6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH
	3PM	-	7AM NIGHTLY 11/12	6 1/4"
	4PM	-	8AM NIGHTLY 11/14, 11/15	6 1/4"
	3PM	-	7AM NIGHTLY 11/19	6 1/4"
	3PM	-	8AM NIGHTLY 11/21, 11/22	6 1/4"
12A:	Closed	-		
12, 12B:	8AM	-	8PM 10/24, 10/25, 10/30, 11/1, 11/2	6 1/4"
	7AM	-	7PM 11/7, 11/8, 11/14, 11/15, 11/20	6 1/4"
12C:	7AM	-	7PM 11/13, 11/15, 11/20, 11/22	6 1/4"
	7AM	-	6PM 11/26, 11/27	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 220-47-31100N Purse seine—Open periods. (07-241)
- WAC 220-47-41100Q Gill net—Open periods. (07-241)

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

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

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

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

Date Adopted: October 5, 2007.

J. P. Koenings
Director

**WSR 07-21-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-244—Filed October 5, 2007, 4:57 p.m., effective October 5, 2007, 4:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100B; and amending WAC 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: Excess hatchery coho from the Oak Harbor net pen facility are available for harvest. Chinook impact from this fishery are negligible and ESA guidelines will still be met. There is insufficient time to promulgate permanent rules.

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

NEW SECTION

WAC 232-28-62100B Puget Sound salmon seasons—Oak Harbor. Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective immediately through October 31, it is unlawful to fish for salmon in Marine Area 8-1, except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect: Waters inside Oak Harbor westerly of a line from Forbes Point to Blowers Bluff: Open for salmon fishing, daily limit 2 coho salmon, release all other salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 1, 2007:

- WAC 232-28-62100B Puget Sound salmon seasons—Oak Harbor.

WSR 07-21-019
EMERGENCY RULES
UNIVERSITY OF WASHINGTON

[Filed October 8, 2007, 9:46 a.m., effective October 8, 2007, 9:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 478-160-163 Waivers of tuition and fees, incorporating changes to waivers mandated by chapters 450 and 461, Laws of 2007. These amendments include: Addition of a new category of individuals eligible for University of Washington employee/Washington state employee tuition waivers under RCW 28B.15.558; and mandatory tuition waivers for children/spouses of combat troops who have been killed, became totally disabled, are missing in action or are being held as prisoners of war under RCW 28B.15.621.

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

Statutory Authority for Adoption: RCW 28B.15.558, 28B.15.621, and 28B.20.130.

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

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

Reasons for this Finding: Immediate adoption of these WAC rule amendments is in the best public interest of those students whose tuition and student status is changed due to recent state statute amendments. It is critical to have the university's rule amended before the impending deadline for autumn quarter tuition payments, while the permanent rule-making process continues.

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

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

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

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

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

Date Adopted: October 5, 2007.

Rebecca Goodwin Deardorff
 Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 07-13-024, filed 6/11/07, effective 7/12/07)

WAC 478-160-163 Waivers of tuition and fees. (1) The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the

laws identified therein. (~~Each of these laws, with the exception of RCW 28B.15.543 and 28B.15.545,~~) A number of these statutes authorize(s), but (does) do not require, the board of regents to grant waivers for different categories of students and provides for waivers of different fees. For the waivers that are authorized but not required by state law, the board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. A list of waivers that the board has implemented can be found in the *University of Washington General Catalog*, which is published biennially. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html.

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

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

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

(5) Specific limitations on waivers are as follows:

(a) Waivers authorized by RCW 28B.15.621 (2)(a) for eligible veterans and National Guard members, shall be awarded only to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students pursuing their first advanced degree (including advanced degrees earned at other institutions), provided however, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621 (2)(a) as undergraduates at any Washington state institution of higher education shall not be eligible for this waiver.

To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and a DD form

214 (Report of Separation) indicating their service related to specific United States military operations or campaigns fought on foreign soil or in international waters.

~~(b) ((Waivers authorized by RCW 28B.15.621 (2)(b) and (c) for children or spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded only to:~~

~~(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and~~

~~(ii) Full-time graduate or professional degree students pursuing their first advanced degree (including advanced degrees earned at other institutions), provided however, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621 (2)(b) or (c) as undergraduates at any Washington state institution of higher education shall not be eligible for this waiver.~~

~~(e))~~ Waivers of nonresident tuition authorized by RCW 28B.15.014 for university faculty and classified or professional staff shall be restricted to four consecutive quarters from their date of employment with the University of Washington. The recipient of the waiver must be employed by the first day of the quarter for which the waiver is awarded. Waivers awarded to immigrant refugees, or the spouses or dependent children of such refugees, shall be restricted to persons who reside in Washington state and to four consecutive quarters from their arrival in Washington state.

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

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

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

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

(iii) Teachers and other certificated instructional staff employed at public common and vocational schools, holding or seeking a valid endorsement and assignment in a state-identified shortage area.

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

~~fought on foreign soil or in international waters.))~~ Waivers mandated by RCW 28B.15.621(4), as amended by section 1, chapter 450, Laws of 2007, for children and spouses or surviving spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded in accordance with, and subject to the limitations set forth in state law.

(7) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

**WSR 07-21-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-246—Filed October 9, 2007, 1:37 p.m., effective October 9, 2007, 1:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000S; 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: October 9, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-44-05000T Coastal bottom fish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice: (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 72, Number 192 published on October 4, 2007. 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) 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 the 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 220-44-05000S Coastal bottomfish catch limits. (07-158)

**WSR 07-21-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-247—Filed October 9, 2007, 4:09 p.m., effective October 9, 2007, 4:09 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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 lake was originally closed from 6:00 p.m. Tuesdays through 6:00 p.m. Wednesdays during the month of October to avoid conflicts between a tribal commercial fishery and the sport fishery. The Yakama Nation has decided not to conduct the commercial fishery. This action allows the opportunity for additional sport fishing. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 9, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Drano Lake (Skamania Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 31, 2007, a person may fish in Drano Lake downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Highway 14 Bridge seven days a week.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. November 1, 2007:

WAC 232-28-61900I	Exceptions to statewide rules—Drano Lake (Skamania Co.)
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**WSR 07-21-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-249—Filed October 9, 2007, 4:11 p.m., effective October 14, 2007]

Effective Date of Rule: October 14, 2007.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibition of all diving from licensed sea urchin harvest vessels within one day of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

Date Adopted: October 9, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-07300N Sea urchins. Notwithstanding the provisions of WAC 220-52-073, effective October 14, 2007, until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, 4, 6 and 7 are open only on Sunday, Monday and Tuesday of each week. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week. In Sea Urchin Districts 1 and 2 it is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of spines).

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

REPEALER

The following section of the Washington Administrative Code is repealed effective October 14, 2007:

WAC 220-52-07300M Sea urchins. (07-219)

**WSR 07-21-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-250—Filed October 10, 2007, 4:33 p.m., effective October 10, 2007, 4:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relation-

ship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Provides chinook-directed fishing in all five zones. There are upriver bright chinook available for harvest. Adds one day of coho-directed fishing in Zones 1-3. The *U.S. v. Oregon Technical Advisory Committee* updated the coho run size and there are impacts remaining to lower Columbia River coho to provide for this fishery. Prohibits sale of white sturgeon in mainstem fisheries as there are less than one hundred fish remaining on the guideline. Prohibits sale of white sturgeon in SAFE fisheries next week as the guideline has been achieved in these areas. The season is consistent with the 2005-2007 interim management agreement and the 2007 non-Indian salmon allocation agreement adopted for 2007. The regulation is consistent with compact action of July 26 and October 10, 2007. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the

Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 10, 2007.

J. P. Koenings
Director

NEW SECTION

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

1. AREA: SMCRA 1A, 1B, 1C

a. SEASON: Open 7:00 a.m. to 7:00 p.m. October 11, 2007.

b. GEAR: No minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A.

d. ALLOWABLE SALE: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

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

a. SEASON: 7:00 p.m. October 10 to 7:00 a.m. October 11, 2007

7:00 p.m. October 11 to 7:00 a.m. October 12, 2007

7:00 p.m. October 14 to 7:00 a.m. October 15, 2007

7:00 p.m. October 15 to 7:00 a.m. October 16, 2007

7:00 p.m. October 16 to 7:00 a.m. October 17, 2007

b. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy, Washougal.

d. ALLOWABLE SALE: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

3. Blind Slough/Knapka Slough Select Area.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 6:00 p.m. to 8:00 a.m. thereafter.

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

4. Tongue Point/South Channel Select Area.

a. OPEN AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and

the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

5. Deep River Select Area.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

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

6. ALLOWABLE SALES: Applies to all seasons stated in items 3-5: Salmon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday) through October 13. Effective 12:01 a.m. October 14, sale of white sturgeon is prohibited. Green sturgeon retention is prohibited.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-0100T Columbia River season below Bonneville. (07-245)

(a) Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open immediately, until 5:00 p.m., October 31, 2007. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

REPEALER

The following section of the Washington Administrative Code is repealed, effective 5:00 p.m. October 15, 2007:

WAC 220-52-05100S Puget Sound shrimp pot and beam trawl fishery—Season. (07-228)

The following section of the Washington Administrative Code is repealed, effective 11:59 p.m. October 31, 2007:

WAC 220-52-05100T Puget Sound shrimp pot and beam trawl fishery—Season.

WSR 07-21-070
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed October 15, 2007, 1:47 p.m., effective October 15, 2007, 1:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: To extend the emergency rule adopted under WSR 07-13-070, 2006 International Building Code, chapter 51-50 WAC, related to structural design and the use of ASCE 7, Minimum Design Loads for Buildings and Other Structures, published by the American Society of Civil Engineers.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW.

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

Reasons for this Finding: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council's adoption of chapter 51-50 WAC, the 2006 edition of the International Building Code (IBC), published

by the International Code Council, will take effect July 1, 2007. After adoption of this code document, it was found that there was a significant technical error in one of the referenced documents used to calculate structural seismic design loads. The referenced standard is currently going through the process of making the correction. In the interim, the council determined that it was necessary to make these technical corrections to the 2006 IBC. Immediate adoption of this amendment is necessary so that structural engineers will have proper guidance for determining earthquake loads in building design.

The council is currently in the process of adopting a permanent rule for this section. The CR-102 has been filed under WSR 07-16-025, and public hearings have been held. The council will take action on a permanent rule on November 9, 2007.

The council concluded that it is in the best interest of the general safety and welfare of the state of Washington to amend the provisions related to ASCE 7-05 concerning seismic design loads and include these amendments as WAC 51-50-1613.

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 1, 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 0, Repealed 0.

Date Adopted: June 8, 2007.

John P. Neff
Council Chair

NEW SECTION

WAC 51-50-1613 Section 1613—Earthquake loads.

1613.7 Modification of ASCE 7. ASCE 7-05 including Supplement #1 is modified according to this section.

1613.7.1 The following equations found in Section 12.8 and Section 15.4 expressing limitations for the seismic response coefficient C_s shall be defined as follows:

$$\text{Equation 12.8-5} \quad C_s = 0.044S_{DS}I \geq 0.01$$

$$\text{Equation 15.4-1} \quad C_s = 0.044S_{DS}I \geq 0.03$$

$$\text{Equation 15.4-3} \quad C_s = 0.044S_{DS}I \geq 0.01$$

WSR 07-21-071
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed October 15, 2007, 1:48 p.m., effective October 15, 2007, 1:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: To continue the emergency rule filed under WSR 07-13-069, amendment of 2006 International Residential Code, WAC 51-51-0404, related to lateral support for basement foundation walls.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0404.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW.

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

Reasons for this Finding: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council adopted the 2006 edition of the International Residential Code (IRC) effective July 1, 2007. The IRC regulates the construction of one and two family residences and townhouses. The 2006 IRC contains new provisions related to a requirement for lateral restraint at the top of concrete and masonry foundation walls, which the council initially amended to require only in the case of walls over five feet in height. Upon further review, the council determined the new requirement would still impose significant and potentially unnecessary attachment and blocking requirements to basement walls that exceed five feet, and would cause unnecessary economic burden on the building industry in Washington.

There has been considerable debate on this issue both in the state and at the national level. Council appointed a technical advisory group to review the issue. The group reported back to the council that there have been no failures of foundation walls in Washington state built under the previous requirements. The failures that have occurred can be traced back to other faulty construction practices. The technical advisory group felt there was no technical substantiation for the increase in cost associated with the new requirements for lateral restraint of foundation walls. At the final action hearing of the International Code Council, the membership also concurred with Washington's technical advisory group and voted to remove these additional provisions from the national model code.

The council is currently in the process of adopting a permanent rule for this section. The CR-102 has been filed

under WSR 07-16-026, and public hearings have been held. The council will take action on a permanent rule on November 9, 2007.

The council concluded that it is in the best interest of the general welfare of the state of Washington to amend the provisions related to lateral restraint of foundation walls in Section R404 of the IRC with the language adopted by the membership of the International Code Council for inclusion in the 2009 edition of the IRC.

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 1, 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: June 8, 2007.

John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0404 Section R404—Foundation and retaining walls.

R404.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls shall be selected and constructed in accordance with the provisions of Section R404 or in accordance with ACI 318, ACI 332, NCMA TR68-A or ACI 530/ASCE 5/TMS 402 or other approved structural standards. When ACI 318, ACI 332 or ACI 530/ASCE 5/TMS 402 or the provisions of Section R404 are used to design concrete or masonry foundation walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for the design, unless otherwise required by the state law of the jurisdiction having authority.

~~((Foundation walls that meet all of the following shall be considered laterally supported:~~

~~1. Full basement floor shall be 3.5 inches (89 mm) thick concrete slab poured tight against the bottom of the foundation wall.~~

~~2. Floor joists and blocking shall be connected to the sill plate at the top of the wall by the prescriptive method called out in Table R404.1(1), or, shall be connected with an approved connector with listed capacity meeting Table 404.1(1).~~

~~3. Bolt spacing for the sill plate shall be no greater than per Table R404.1(2).~~

~~4. Floor shall be blocked perpendicular to the floor joists. Blocking shall be full depth within two joist spaces of the~~

foundation wall, and be flat-blocked with minimum 2-inch by 4-inch (51 mm by 102 mm) blocking elsewhere.

5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W , shall not exceed the value specified in Table R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20-gage metal angle clip at 24 inches (610 mm) on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.36 kN/m) capacity.

EXCEPTION: Foundations constructed entirely of concrete with stem walls not exceeding 5 feet (1524 mm) in height and supporting less than 4 feet (1220 mm) of unbalanced backfill are exempt from the lateral bracing requirements of Section R404.1.)

Tables R404.1(1), R404.1(2), and R404.1(3) are not adopted.

**TABLE R404.1.1(3)
10-INCH MASONRY FOUNDATION
WALLS WITH REINFORCING
WHERE $d > 6.75$ INCHES^a**

(no changes to Table R404.1.1(3) or footnotes)

R404.3 Wood sill plates. Wood sill plates shall be a minimum of 2-inch by 4-inch nominal lumber. Sill plate anchorage shall be in accordance with Sections R403.1.6 and R602.11.

**WSR 07-21-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-254—Filed October 17, 2007, 11:26 a.m., effective October 17, 2007, 11:26 a.m.]

Effective Date of Rule: Immediately.

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

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

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Provides chinook-directed fishing in all five zones. There are upriver bright chinook available for harvest. Adds one 6-hour coho-directed fishing in Zones 1-3. There are impacts remaining to lower Columbia River coho to provide for this fishery based on current run sizes and fisheries to date. Current CPUE information suggests that the late coho run size is greater than predicted. Continues prohibition of sales of white sturgeon in mainstem and SAFE fisheries. The season is consistent with the 2005-2007 interim management agreement and the 2007 non-Indian salmon allocation agreement adopted for 2007. The regulation is consistent with compact action of July 26 and October 16, 2007. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 17, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-0100V Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. AREA: SMCRA 1A, 1B, 1C

a. SEASON: Open 1:00 p.m. to 7:00 p.m. October 17, 2007.

b. GEAR: No minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A.

d. ALLOWABLE SALE: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

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

SEASON: 7:00 p.m. October 16 to 7:00 a.m. October 17, 2007

7:00 p.m. October 18 to 7:00 a.m. October 19, 2007

7:00 p.m. October 21 to 7:00 a.m. October 22, 2007

7:00 p.m. October 23 to 7:00 a.m. October 24, 2007

a. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as

the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

b. SANCTUARIES: Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy, Washougal.

c. ALLOWABLE SALE: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

d. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

3. Blind Slough/Knappa Slough Select Area.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 6:00 p.m. to 8:00 a.m.

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

4. Tongue Point/South Channel Select Area.

a. OPEN AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 4:00 p.m. to 8:00 a.m.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

5. Deep River Select Area.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 4:00 p.m. to 8:00 a.m.

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

6. ALLOWABLE SALES: Applies to all seasons stated in items 3-5: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000U Columbia River season below Bonneville. (07-250)

WSR 07-21-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-258—Filed October 18, 2007, 11:32 a.m., effective October 20, 2007, 6:00 p.m.]

Effective Date of Rule: October 20, 2007, 6:00 p.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100N; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Discontinues sale of platform and hook and line caught fish in the mainstem Columbia River but continues sale of chinook and coho from Yakama Nation tributary fisheries when those tributaries are open under Yakama Nation rules. Harvestable numbers of salmon and steelhead are available under the ESA guidelines. Rule is consistent with action of the Columbia River compact on October 16, 2007. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2005-2007 interim management agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

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

Date Adopted: October 17, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1F, 1G, and 1H and in the White Salmon River and Klickitat River, except that those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

Open Periods: Immediately through December 22, 2007, and only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fisheries for enrolled Yakama Nation members.

Open Areas: White Salmon and Klickitat rivers

Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

Allowable sale includes: Chinook and coho.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 6:00 p.m. October 20, 2007:

WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam. (07-239)

**WSR 07-21-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-259—Filed October 18, 2007, 11:33 a.m., effective October 18, 2007, 11:33 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100K; and amending WAC 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: Hatchery escapement has been met and good numbers of summer steelhead continue to enter the Cowlitz River and are available for harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 17, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Cowlitz River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 31, 2007, in those waters of the Cowlitz River from the Highway 4 Bridge at Kelso, upstream to 100 feet or posted markers below the Barrier Dam, special daily limit of six hatchery steelhead may be retained.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. November 1, 2007:

WAC 232-28-61900K Exceptions to statewide rules—Cowlitz River.

WSR 07-21-100
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-261—Filed October 19, 2007, 9:55 a.m., effective October 21, 2007, 6:00 a.m.]

Effective Date of Rule: October 21, 2007, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100I; 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 the sea cucumber districts listed. Prohibition of all diving from licensed sea cucumber harvest vessels within two days of scheduled 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: October 19, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07100J Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers for commercial purposes except as provided for in this section:

(1) Effective 6:00 a.m. October 21, 2007, until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2 and 5 on Sunday through Thursday of each week.

(2) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Friday and

Saturday 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. October 21, 2007:

WAC 220-52-07100I Sea cucumbers. (07-219)

WSR 07-21-105
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 19, 2007, 2:24 p.m., effective October 24, 2007]

Effective Date of Rule: October 24, 2007.

Purpose: The department is amending chapter 388-532 WAC to codify new special terms and conditions in the new family planning/TAKE CHARGE waiver as set forth by the Centers for Medicare and Medicaid Services (CMS) for the state of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-750, 388-532-760, 388-532-780, and 388-532-790.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.800.

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

Reasons for this Finding: This emergency rule adoption is necessary while the permanent rule-making process is being completed because the current rules are out of compliance with special terms and conditions of the new family planning/TAKE CHARGE waiver set forth by the CMS for the state of Washington. The waiver was signed August 31, 2006, and is retroactive effective July 1, 2006. Immediate adoption of this emergency rule is required to prevent loss of 90% federal match funds for the family planning/TAKE CHARGE program. This continues the emergency rule that is currently in effect under WSR 07-14-030 while the department completes the permanent rule-making process. The department filed a proposed rule-making notice under WSR 07-07-102 and held a public hearing on May 8, 2007. The department is filing a second rule-making notice (CR-102) in the month of October 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 15, 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 15, Repealed 0.

Date Adopted: October 16, 2007.

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-22 issue of the Register.

**WSR 07-21-111
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-262—Filed October 19, 2007, 4:21 p.m., effective October 21, 2007, 12:01 a.m.]

Effective Date of Rule: October 21, 2007, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100P and 220-47-41100R; and amending WAC 220-47-311 and 220-47-411.

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 surplus of chum salmon in Areas 7, 7A, indicates that additional days of fishing are warranted and will still meet conservation goals for the areas. 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: October 19, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-31100Q Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM with use of recovery box;	10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29,
	7AM - 3:15PM without use of recovery box	10/30, 10/31, 11/1, 11/2, 11/3
	7AM - 5PM with use of recovery box;	11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12,
	7AM - 2:30PM without use of recovery box	11/13, 11/14, 11/15, 11/16, 11/17
7B:	7AM 9/23	- 6PM 11/3
	7AM 11/5	- 4PM 11/9
	7AM 11/12	- 4PM 11/16
	7AM 11/19	- 4PM 11/23
	7AM 11/26	- 4PM 11/30
	8AM 12/3	- 4PM 12/7

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	7AM - 5PM	11/6
	7AM - 5PM	11/13
	7AM - 5PM	11/20
	7AM - 4PM	11/27
8A:	7AM - 6PM	10/22, 10/30, 11/1
	7AM - 5PM	11/7, 11/12, 11/14, 11/20
	7AM - 4PM	11/26, 11/28
8D:	7AM - 6PM	10/23, 10/25, 10/31
	7AM - 5PM	11/5, 11/7, 11/14, 11/19, 11/20
	7AM - 4PM	11/28
10, 11:	7AM - 6PM	10/22, 10/29, 10/31
	7AM - 5PM	11/5, 11/12, 11/14, 11/19
	7AM - 4PM	11/26
12,12B:	7AM - 6PM	10/22, 10/29, 10/31
	7AM - 5PM	11/5, 11/12, 11/19
12C:	7AM - 5PM	11/13, 11/20
	7AM - 4PM	11/27

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 27 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, and prior to September 9 in Area 7B.

Chum salmon - prior to September 30 in Areas 7 and 7A.
Sockeye salmon at all times.

Pink salmon at all times.

All other saltwater and freshwater areas - closed.

NEW SECTION

WAC 220-47-41100S Gill net—Open periods. It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gill net only.	7 AM - 7 PM	10/22, 10/23, 10/24, 10/25, 10/26	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	Noon - Midnight	10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2, 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17	6 1/4"
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Note: In Areas 7 and 7A it is unlawful to keep sockeye salmon in area 7, and 7A at all times.

7B:	7AM 9/23 - 8PM 10/27		5"
	7AM 10/28 - 8PM 11/3		6 1/4"
	7AM 11/5 - 4PM 11/9		6 1/4"
	7AM 11/12 - 4PM 11/16		6 1/4"
	7AM 11/19 - 4PM 11/23		6 1/4"
	7AM 11/26 - 4PM 11/30		6 1/4"
	8AM 12/3 - 4PM 12/7		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 6:00 PM on the first Friday in December. It is unlawful to keep sockeye salmon in area 7B at all times.

8:	7AM - 7PM	11/5, 11/7, 11/9, 11/12, 11/14, 11/16, 11/19, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/26, 11/28, 11/30	6 1/4"
8A:	8AM - 8PM	10/23, 10/25, 10/26, 10/29, 10/31, 11/2	6 1/4"
	7AM - 7PM	11/6, 11/8, 11/9, 11/13, 11/15, 11/16, 11/19, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/27, 11/29, 11/30	6 1/4"
8D:	8AM - 8PM	10/25, 10/26	5"
	8AM - 8PM	11/1, 11/2	6 1/4"
	7AM - 7PM	11/8, 11/9,	6 1/4"
	7AM - 7PM	11/15, 11/16, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/29, 11/30	6 1/4"
9A:	6AM 9/26 - 7PM 11/3		5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10, 11:	4PM - 7AM	NIGHTLY 10/21	6 1/4"
	5PM - 9AM	NIGHTLY 10/23	6 1/4"
	3PM - 7AM	NIGHTLY 10/28, 11/30	6 1/4"
	5PM - 9AM	NIGHTLY 10/31	6 1/4"
	3PM - 7AM	NIGHTLY 11/4	6 1/4"
	4PM - 8AM	NIGHTLY 11/6	6 1/4"
	3PM - 7AM	NIGHTLY 11/11, 11/13	6 1/4"
	4PM - 8AM	NIGHTLY 11/14	6 1/4"
	3PM - 7AM	NIGHTLY 11/18	6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH	
	4PM	-	8AM	NIGHTLY 11/20	6 1/4"
	2PM	-	7AM	NIGHTLY 11/25	6 1/4"
	3PM	-	8AM	NIGHTLY 11/27	6 1/4"
12, 12B:	8AM	-	8PM	10/24, 10/25, 10/30, 11/1, 11/2	6 1/4"
	7AM	-	7PM	11/7, 11/8, 11/14, 11/15, 11/20	6 1/4"
12C:	7AM	-	7PM	11/13, 11/15, 11/20, 11/22	6 1/4"
	7AM	-	6PM	11/26, 11/27	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

REPEALER

The following sections of the Washington Administrative Code are repealed, effective 12:01 a.m. October 21, 2007:

- WAC 220-47-31100P Purse seine—Open periods. (07-248)
- WAC 220-47-41100R Gill net—Open periods. (07-248)

**WSR 07-21-112
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-263—Filed October 20, 2007, 11:21 a.m., effective October 20, 2007, 11:21 a.m.]

Effective Date of Rule: Immediately.

Purpose: To repeal emergency rules affecting commercial salmon fisheries in Puget Sound. Permanent rules (WSR 07-20-006) for these fisheries became effective today, eliminating the need for the emergency rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-00100A, 220-47-30200B, 220-47-31000A, 220-47-31100M, 220-47-32500B, 220-47-40100B, and 220-47-41100N.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The emergency rules (WSR 07-17-103) purposefully omitted an area of fishing that the permanent rules (WSR 07-20-006) purposefully include. These permanent rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered.

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 7.

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

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

Date Adopted: October 20, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-47-00100A Puget Sound salmon—Quick reporting.
- WAC 220-47-30200B Puget Sound—Lawful gear—Gill net.
- WAC 220-47-31000A Puget Sound net seasons—Time.
- WAC 220-47-31100M Purse seine—Open periods.
- WAC 220-47-32500B Purse seine—Release of incidentally caught fish.
- WAC 220-47-40100B Reef net open periods.
- WAC 220-47-41100N Gill net—Open periods.

WSR 07-21-115
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-260—Filed October 22, 2007, 1:53 p.m., effective October 25, 2007, 12:01 p.m.]

Effective Date of Rule: October 25, 2007, 12:01 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000D; 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: October 22, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

1. Effective 12:01 p.m. October 25 through 11:59 p.m. October 28, 2007, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. October 26 through 11:59 p.m. October 27, 2007, razor clam digging is allowed in Razor Clam Area 1 and that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern

boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. October 29, 2007:

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

WSR 07-21-118
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-264—Filed October 22, 2007, 4:43 p.m., effective October 22, 2007, 4:43 p.m.]

Effective Date of Rule: Immediately.

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

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

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement for Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Provides chinook-directed fishing in all five zones. There are upriver bright chinook available for harvest. Adds one 12-hour coho-directed fishing in Zones 1-3. There are impacts remaining to lower Columbia River coho to provide for this fishery based on current run sizes and fisheries to date. Current CPUE information suggests that the late coho run size is greater than predicted. Continues prohibition of sales of white sturgeon in mainstem and SAFE fisheries. The season is consistent with

the 2005-2007 interim management agreement and the 2007 non-Indian salmon allocation agreement adopted for 2007. The regulation is consistent with compact action of July 26 and October 22, 2007. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 22, 2007.

J. P. Koenings
Director

NEW SECTION

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

1. AREA: SMCRA 1A, 1B, 1C

a. SEASON: Open 7:00 a.m. to 7:00 p.m. October 23, 2007.

b. GEAR: No minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Elokomina-A, Abernathy, Cowlitz, Kalama-A, Lewis-A.

d. ALLOWABLE SALE: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 hours of closure of the designated fishery.

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

a. SEASON: Tuesday, Wednesday, and Thursday nights October 23 through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m.

b. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c. SANCTUARIES: Elokomina-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy, Washougal.

d. ALLOWABLE SALE: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within

24 hours of closure of the designated fishery for fisheries ending 7:00 a.m. October 24, 12-hour quick reporting thereafter.

3. Blind Slough/Knappa Slough Select Area.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 6:00 p.m. to 8:00 a.m.

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

4. Tongue Point/South Channel Select Area.

a. OPEN AREA: Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 4:00 p.m. to 8:00 a.m.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

5. Deep River Select Area.

a. OPEN AREA: Deep River fishing area includes all waters downstream of the town of Deep River to the mouth, defined by a line from USCG navigation marker #16 south-

west to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 4:00 p.m. to 8:00 a.m.

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

6. ALLOWABLE SALES: Applies to all seasons stated in items 3-5: Salmon. All sturgeon must be released. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000V Columbia River season below Bonneville. (07-254)

WSR 07-21-125 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-265—Filed October 23, 2007, 1:44 p.m., effective October 24, 2007, 7:00 a.m.]

Effective Date of Rule: October 24, 2007, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000L; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Pot limit changes for the commercial crab fishery in the Puget Sound licensing district is to maintain commercial harvest allocation plans. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 23, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-04000M Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective 7:00 a.m. October 24, 2007 until further notice, no commercial crab pots are allowed to be set, pulled or fished west of the longitude line 123°7.0' projected from the southern shoreline of Dungeness Spit due south to the shore of Dungeness Bay.

(2) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license, per buoy tag number, in Crab Management Region 1 (which includes Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B); and 75 pots per license, per buoy tag number, in Crab Management Region 2 East (which includes Marine Fish Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E):

The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection in the pot-limited areas.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. October 24, 2007:

WAC 220-52-04000L Commercial crab fishery—
Lawful and unlawful gear,
methods, and other unlawful
acts. (07-221)

WSR 07-21-141
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 24, 2007, 9:28 a.m., effective October 27, 2007]

Effective Date of Rule: October 27, 2007.

Purpose: The department is requesting to extend the emergency adoption of WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?, these rule changes are necessary to increase the state supplemental payments by \$1.77 per month beginning July 1, 2007, for SSI clients who reside in nursing facilities, residential habilitation

centers, or state hospitals and who receive a personal needs allowance as required by chapter 522, Laws of 2007, signed by Governor Christine O. Gregoire on May 15, 2007. The department is currently working on the regular rule-filing process. A CR-102 (WSR 07-18-067) was filed on September 4, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Other Authority: Chapter 522, Laws of 2007, signed by Governor Christine O. Gregoire on May 15, 2007.

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: These rule changes are necessary to increase the state supplemental payment of \$1.77 per month beginning July 1, 2007, as required by chapter 522, Laws of 2007, signed by Governor Christine O. Gregoire on May 15, 2007. This extends the emergency rule filed as WSR 07-14-073 while the department completes the permanent rule adoption process.

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

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

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

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

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

Date Adopted: October 23, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-071, filed 7/28/06, effective 8/28/06)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a fed-

eral SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older)((--Calendar Year 2005))	\$46.00
Individual (blind as determined by SSA)((--Calendar Year 2005))	\$46.00
Individual with an ineligible spouse((--Calendar Year 2005))	\$46.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.

Medical institution	Monthly SSP Rate
Individual	\$(23.68) <u>25.45</u>

**WSR 07-21-145
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 24, 2007, 9:52 a.m., effective October 24, 2007, 9:52 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities is proposing this emergency rule to amend WAC 388-828-5080 to be consistent with the DDD assessment application.

Citation of Existing Rules Affected by this Order: Amending WAC 388-828-5080.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: 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: This emergency rule will amend WAC 388-828-5080 to accurately reflect the protective supervision age-based score adjustment made by the DDD assessment application when determining the protective supervision support level. The DDD assessment applica-

tion is correctly calculating the protective supervision support level. Without this rule, clients may incorrectly be found eligible or ineligible for services or benefits.

The department filed a preproposal statement of inquiry (WSR 07-15-081) on July 18, 2007, to make amendments, clarifications and corrections necessary to this chapter 388-828 WAC. This rule will be formally proposed and incorporated into the CR-102 that will be filed in February 2007.

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: October 18, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5080 How does DDD determine your adjusted protective supervision acuity score? DDD determines your adjusted protective supervision acuity score by applying the following age-based score adjustments to your level of monitoring score for question number one in WAC 388-828-5060:

If you are:	Then your age-based score adjustment is:
18 years or older	Score is equal to your level of monitoring score
16-17 years of age	Subtract ((+)) <u>2</u> from your level of monitoring score
12-15 years of age	Subtract ((2)) <u>3</u> from your level of monitoring score
8-11 years of age	Subtract ((3)) <u>4</u> from your level of monitoring score
5-7 years of age	Subtract ((4)) <u>5</u> from your level of monitoring score
0-4 years of age	Subtract ((5)) <u>6</u> from your level of monitoring score
If your adjusted level of monitoring score is a negative number, your adjusted protective supervision acuity score is zero.	

Example: If you are fifteen years old and "close proximity, (e.g., 1-2 hours, structured)" is identified as your level of

monitoring score, your adjusted protective supervision acuity score is: Your close proximity score of four minus age-based score adjustment of ~~((two))~~ three. For age twelve through fifteen, this equals an adjusted protective supervision score of ~~((two))~~ one.