

WSR 08-14-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-145—Filed June 18, 2008, 6:18 p.m., effective June 23, 2008, 9:00 p.m.]

Effective Date of Rule: June 23, 2008, 9:00 p.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500H; and amending WAC 220-56-325.

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 amount of spot shrimp is available in Marine Areas 8-1 and 8-2 for one day of 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: June 18, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-32500I Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 7 and 13, except as provided for in this section.

a) Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary:

i) Open to the harvest of all shrimp species except Spot shrimp. It is unlawful to possess Spot shrimp, and all Spot shrimp must immediately be returned to the water unharmed.

ii) It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

b) Marine Area 13 is open to the harvest of all shrimp species except Spot shrimp. It is unlawful to possess Spot shrimp, and all Spot shrimp must immediately be returned to the water unharmed.

2) Effective immediately until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 9 and 11 are open to the harvest of all shrimp species except Spot shrimp. All Spot shrimp caught must be returned to the water immediately. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

3) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of the Marine Areas 8-1 and 8-2, except as provided for in this section.

a) Open to all shrimp species from 7:00 a.m. through 3:00 p.m., on June 24, 2008.

b) Effective 7:00 a.m. June 25, 2008 until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1 and 8-2 are open to the harvest of all shrimp species except Spot shrimp. All Spot shrimp caught must be returned to the water immediately. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. June 23, 2008:

WAC 220-56-32500H Shrimp—Areas and seasons
(08-137)

WSR 08-14-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-144—Filed June 19, 2008, 8:45 a.m., effective June 25, 2008, 6:00 p.m.]

Effective Date of Rule: June 25, 2008, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600U; and amending WAC 220-52-040, 220-52-046, and 220-69-240.

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 limited commercial fishery in these marine fish-shellfish management and catch reporting areas are to take advantage of harvest opportunity and 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 3, 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: June 19, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-04000Y Commercial crab fishery—Exceptions to permanent rules for pot limits. Notwithstanding the provisions of WAC 220-52-040, effective 6:00 p.m. June 25, 2008 through 9:00 p.m. June 27, 2008 it is unlawful for any person to fish for crabs for commercial purposes with more than 25 pots per license in all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C and 26A-E. Buoy tags are not required during this period.

NEW SECTION

WAC 220-52-04600W Crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective 6:00 p.m. June 25, 2008 through 9:00 p.m. June 27, 2008, a person may fish for Dungeness Crab for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C and 26A-E.

NEW SECTION

WAC 220-69-24000M Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, purchasers are not required to phone in crab landings.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. June 25, 2006:

WAC 220-52-04600U Crab fishery—Seasons and areas, order number 08-49.

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

**WSR 08-14-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-146—Filed June 19, 2008, 2:49 p.m., effective June 19, 2008, 2:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000J and 220-24-04000K; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. The remaining quota should be taken in this four-day opening. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: June 19, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

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

June 21 through June 24, 2008.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Landing and possession limit of 35 chinook per boat per entire open period for the entire catch areas 1, 2, 3 and 4 from June 21 through June 24, 2008.

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

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

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

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

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

(9) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000J All-citizen commercial salmon troll. (08-76)

The following section of the Washington Administrative Code is repealed effective June 26, 2008:

WAC 220-24-04000K All-citizen commercial salmon troll.

WSR 08-14-013 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-147—Filed June 20, 2008, 8:52 a.m., effective June 25, 2008, 6:00 a.m.]

Effective Date of Rule: June 25, 2008, 6:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and North Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule opens the pot fishery season for nonspot shrimp. 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 Mak-

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

Date Adopted: June 20, 2008.

J. P. Koenings
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) (a) All waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

i) (i) All waters of the Discovery Bay Shrimp District are closed.

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

(c) Effective immediately, until 11:59 p.m. June 29, 2008, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds.

(d) Effective 12:01 a.m. June 30, 2008, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

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

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

(2) Shrimp beam trawl gear:

a. Shrimp Management Area 3 (outside of the Discovery Bay shrimp district, Sequim Bay and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

b. That portion of Catch Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

c. That portion of Catch Area 21A within Shrimp Management Area 1B will open at 6:00 a.m. July 1, 2008, until further notice.

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 25, 2008:

WAC 220-52-05100V Puget Sound shrimp beam trawl fishery—Season (08-71)

WSR 08-14-014

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 20, 2008, 10:21 a.m., effective June 21, 2008]

Effective Date of Rule: June 21, 2008.

Purpose: The department is combining three family support programs into one individual and family services program as directed by the legislature.

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

Other Authority: 2SSB 5467.

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: 2SSB 5467, as amended by the house, directs the department to create the individual and family services program for persons with developmental disabilities by July 1, 2007. A preproposal statement of inquiry (CR-101) was filed as WSR 07-10-018 on April 20, 2007. At that time, the department proposed amending chapter 388-825 WAC but has since decided that a new chapter is required, due to the length of the new rules. These emergency rules replace the emergency rules filed as WSR 08-06-019 while the department proceeds with permanent adoption of these rules. The CR-102 has been filed as WSR 08-11-095 and the hearing is scheduled for July 22, 2008.

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 100, 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 100, Amended 0, Repealed 0.

Date Adopted: June 10, 2008.

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 08-15 issue of the Register.

WSR 08-14-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-143—Filed June 20, 2008, 3:35 p.m., effective June 21, 2008]

Effective Date of Rule: June 21, 2008.

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 232-28-61900F and 232-28-61900B; and amending WAC 232-28-619.

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: Allows the retention of sockeye salmon during the summer chinook season. The sockeye

return is expected to be considerably larger than the pre-season forecast of 75,600. The escapement goal at Bonneville Dam is 75,000 fish. Non-Indian fisheries below the mouth of the Snake River are limited to a 1% harvest/mortality rate on Snake River sockeye that are listed under the Endangered Species Act (ESA). These fisheries are expected to remain within the allowable harvest/mortality rate for Snake River sockeye, and are consistent with the *U.S. v. Oregon* management agreement and associated biological opinion from the National Marine Fisheries Service. There is insufficient time to promulgate permanent regulations. 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 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: June 20, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619,

1. Effective June 21 through June 28, 2008, Chinook and sockeye retention is allowed from a line projected from Rocky Point on the Washington bank, through Red Buoy 44, to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line), upstream to Bonneville Dam (except for those waters closed under permanent regulations).

2. Effective June 21 through July 31, 2008, sockeye retention is allowed from Bonneville Dam upstream to Priest Rapids Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 21, 2008:

WAC 232-28-61900F Exceptions to statewide rules—Columbia River. (08-138)

The following section of the Washington Administrative Code is repealed effective August 1, 2008:

WAC 232-28-61900B Exceptions to statewide rules—Columbia River.

**WSR 08-14-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-149—Filed June 20, 2008, 3:35 p.m., effective June 24, 2008, 7:00 p.m.]

Effective Date of Rule: June 24, 2008, 7:00 p.m.

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 220-33-01000J and 220-33-01000K; 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: Allows the retention of sockeye that are incidentally caught in the previously adopted summer chinook fishing periods. The escapement goal on sockeye is expected to be met and harvestable sockeye are available. Season is consistent with the 2008-2017 management agreement. Regulation is consistent with compact action of December 13, 2007, June 12, and June 19, 2008. 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 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: June 20, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000K 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:

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

SEASON: 7:00 p.m. Tuesday June 24 to 5:00 a.m. Wednesday June 25, 2008;

7:00 p.m. Tuesday July 1 to 5:00 a.m. Wednesday July 2, 2008

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

Multiple Net Rule: It is permissible to have onboard a commercial vessel more than one net, provided the nets are of mesh size legal 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.

ALLOWABLE SALE: Chinook, sockeye, coho, shad, and white sturgeon. All steelhead and green sturgeon must be released immediately. A maximum of five 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 applies only to mainstem fisheries. (Sturgeon retention in Select Area fisheries is prohibited).

SANCTUARIES: Grays River, Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal and Sandy Rivers.

OTHER: 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 7:00 p.m. June 24, 2008:

WAC 220-33-01000J Columbia River season below Bonneville. (08-141)

The following section of the Washington Administrative Code is repealed, effective 5:01 a.m. July 2, 2008:

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

WSR 08-14-029 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-150—Filed June 20, 2008, 3:36 p.m., effective June 21, 2008, 6:00 a.m.]

Effective Date of Rule: June 21, 2008, 6:00 a.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 220-32-05100V; 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: Allows the sale of sockeye in Zone 6 treaty fisheries. The escapement goal for sockeye is expected to be met, and harvestable fish are available. Sales of sockeye are not allowed in the area below Bonneville Dam. Allows the sale of fish caught in platform and hook and line fishery in Zone 6 (SMCRA 1F, 1G, 1H). Also allows the sale of fish caught in Yakama Nation tributary fisheries to be sold only when those tributaries are open under Yakama Nation rules and a commercial season (gillnet or platform gear) in the mainstem is open concurrently.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery

are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes) and sockeye - which may not be sold.

Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on June 12, 2008. 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. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act.

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. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; 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: June 20, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-32-05100W 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 fur-

ther notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) (except as provided in the following subsections) 1E, 1F, 1G, and 1H; and the Wind River, White Salmon River, Klickitat River, and Drano Lake, except that those individuals possessing treaty fishing rights under the Yakima, 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:

1. Open Periods: 6:00 a.m. June 23 until 6:00 p.m. June 25, 2008.

a) Open Areas: Zone 6 (SMCRA 1F, 1G, 1H).

b) Gear: Gillnets; 7-inch minimum mesh size restriction.

2. Open Periods: 6:00 a.m. June 16, 2008, until further notice.

a) Open Areas: Zone 6 (SMCRA 1F, 1G, 1H).

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Open Periods: 6:00 a.m. June 16, 2008 until further notice, and only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members and are concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

a) Open Areas: Wind, White Salmon, and Klickitat rivers.

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Allowable sale includes: For Items 1-3 stated above - Chinook, sockeye, coho, steelhead, walleye, shad, and carp. Sturgeon between 42 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only.

5. Open Periods: 6:00 a.m. June 16, 2008 until further notice, and only under lawfully enacted Yakama Nation tribal subsistence fisheries regulations and under the conditions in the Memo of Agreement (MOA) titled "*2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam*". Is open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries and is concurrent with either commercial gillnet openings or platform gear fisheries in Zone 6 (SMCRA 1F, 1G, 1H).

a) Open Areas: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

6. Allowable sale for subsistence fishery below Bonneville Dam includes: For item #5 stated above - Chinook, coho, steelhead, walleye, shad, and carp. **Sockeye may not be sold**, but may be retained for subsistence purposes. **Sturgeon may not be sold. Sturgeon retention is prohibited for subsistence purposes.**

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

8. There will be no sanctuary in effect at Spring Creek National Fish Hatchery.

9. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) **Hood River** are those waters along the Oregon side of the Columbia River, and they extend to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the break wall at the west end of the port of Hood River, and 1/2-mile upriver from the east bank.

b) **Herman Creek** are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling, and the other is located on the west bank to the north of the boat ramp.

c) **Deschutes River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) **Umatilla River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) **Big White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2-mile downstream from the west bank, upstream to Light "35."

f) **Wind River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1-1/4 miles downstream from the west bank and 1/2-mile upstream from the east bank.

g) **Klickitat River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad tunnel approximately 1/8-miles downstream from the west bank.

h) **Little White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27," upstream to a marker located approximately 1/2-mile upstream from the eastern shoreline.

10. Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) **Area 1F** (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) **Area 1G** includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) **Area 1H** includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 21, 2008:

WAC 220-32-05100V Columbia River salmon seasons above Bonneville Dam. (08-142)

WSR 08-14-030

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-151—Filed June 20, 2008, 3:36 p.m., effective June 21, 2008, 12:01 a.m.]

Effective Date of Rule: June 21, 2008, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000N; and amending WAC 232-28-620.

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: Sufficient chinook remain on the quotas to allow liberalization to two chinook per day in Marine Areas 1, 2, 3, and 4. 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: June 20, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-62000P Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. June 21, 2008, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 1:

(a) Open immediately through June 28, daily limit 2 salmon, release all salmon except Chinook.

(b) Open June 29 until further notice: open Sunday through Thursday of each week, daily limit 2 salmon, except release wild coho.

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

(a) Area 2:

(i) Open immediately through June 28: open Sunday through Thursday of each week, daily limit 2 salmon, release all salmon except Chinook.

(ii) Open June 29 until further notice: open Sunday through Thursday of each week, daily limit 2 salmon, except release wild coho.

(b) Area 2-1:

(i) Open July 1 through July 31: open Sunday through Thursday of each week, daily limit 2 salmon, except release wild coho.

(ii) Open August 1 through August 15: daily limit 6 salmon, not more than two of which may be adult salmon.

(iii) Open August 16 until further notice, daily limit 6 salmon, not more than three of which may be adult salmon, of which only 2 may be Chinook.

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

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

(3) Area 3:

(a) Open immediately through June 28: open Tuesdays through Saturday of each week, daily limit 2 salmon, release all salmon except Chinook.

(b) Open July 1 until further notice: open Tuesday through Saturday of each week, daily limit 2 salmon, except release wild coho.

(4) Area 4:

(a) Open immediately through June 28: open Tuesdays through Saturday of each week, daily limit 2 salmon, release all salmon except Chinook. Closed to salmon angling east of a true north/south line through Sail Rock.

(b) Open July 1 until further notice, with the following area rules, limits, and species restrictions: open Tuesday through Saturday of each week, daily limit 2 salmon, except release wild coho.

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

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

(iii) Effective beginning August 1, release chum.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. June 21, 2008:

WAC 232-28-62000N	Coastal salmon seasons— 2008 North of Falcon. (08-91)
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WSR 08-14-037

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed June 23, 2008, 10:08 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. The telecommunications relay services (TRS) and Washington telephone assistance program (WTAP) tax rates are determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

The department is adopting this rule on an emergency basis to recognize the rates that apply effective July 1, 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-270 Telephone program excise tax rates.

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

Other Authority: RCW 43.20A.725 and 80.36.430.

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

Reasons for this Finding: An emergency adoption of Rule 270 is necessary because a permanent rule cannot be adopted at this time. This rule action will provide needed telephone program excise tax rates that apply effective July 1, 2008, until a permanent rule can be adopted. This emergency rule is the same as the proposed rule filed on May 6, 2008 (WSR 08-10-077).

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

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

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

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

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

Date Adopted: June 23, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 07-17-110, filed 8/17/07, effective 9/17/07)

WAC 458-20-270 Telephone program excise tax rates. RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

The monthly telephone program excise tax rates per switched access line are as follows:

Period	TRS Rate	WTAP Rate
7/1/2005 - 6/30/2006	10 cents	14 cents
7/1/2006 - 6/30/2007	9 cents	14 cents
7/1/2007 - 6/30/2008	12 cents	14 cents
<u>7/1/2008 - 6/30/2009</u>	<u>12 cents</u>	<u>13 cents</u>

WSR 08-14-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-148—Filed June 23, 2008, 1:17 p.m., effective June 23, 2008, 3:00 p.m.]

Effective Date of Rule: June 23, 2008, 3:00 p.m.

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 220-33-03000E; and amending WAC 220-33-030.

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: Extends the Area 2S shad fishery for two additional days. Harvestable numbers of shad are available. Markets are available for these fish, and the industry requested the opportunity to fill those markets. Shad are overabundant in the Columbia River, and management has encouraged the commercial industry to develop viable markets. Incidental impacts to nontarget species are small and are included in the biological opinion for the 2005-2007 management agreement. This rule is consistent with actions of the Columbia River compact hearing of February 15, and June 19, 2008, and is consistent with requirements of the ESA. 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: June 23, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-03000E Commercial shad—Columbia River. Notwithstanding the provisions of WAC 220-33-030, it is unlawful to take, fish for or possess shad taken for commercial purposes except as provided for in this section:

Area: **2S** - True north/south line through Light #50 near the mouth of the Sandy River, upstream to the commercial fishing boundary near Beacon Rock.

Dates: Daily, 3:00 p.m. to 10:00 p.m.

June 23, 2008, and June 25, 2008.

Gear: Single-wall, unslackened, floater gill net, with breaking strength of less than 10 pounds.

Mesh size: 5 3/8 inches to 6 1/4 inches. The net may not exceed 150 fathoms in length nor 40 meshes in depth.

Allowable Sale: During the fishing periods provided in this section, only shad may be kept and sold. All salmonids, walleye and sturgeon must be immediately returned to the water, and those alive must be released unharmed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 10:01 p.m. June 25, 2008:

WAC 220-33-03000E Commercial shad—Columbia River.

WSR 08-14-056

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-153—Filed June 25, 2008, 8:34 a.m., effective June 25, 2008, 8:34 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: With a late surge, the hatchery brood stock goal is expected to be met. However, additional fish are needed for reintroduction and additional harvest opportunity in the upper watershed. 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 3.

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: June 25, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Cowlitz River. Notwithstanding the provisions of WAC 232-28-619, effective June 25 through July 31, 2008, a person may fish for salmon from boundary markers at the mouth to Mayfield Dam. Daily limit six salmon, no more than two may be adults and only one of the adults may be a Chinook salmon, minimum size 12 inches. Only hatchery coho and hatchery Chinook may be retained.

REPEALER

The following sections of the Washington Administrative Code are repealed effective June 25, 2008:

WAC 232-28-61900A Exceptions to statewide rules—Lewis River. (08-134)

WAC 232-28-61900N Exceptions to statewide rules—Cowlitz and Kalama rivers. (08-112)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 1, 2008:

WAC 232-28-61900E Exceptions to statewide rules—Cowlitz River.

WSR 08-14-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-154—Filed June 25, 2008, 8:39 a.m., effective June 25, 2008, 8:39 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L and 232-28-61900M; 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: We have met hatchery broodstock needs and excess hatchery fish are available for harvest. There has been a good early showing of hatchery summer runs to date. Catches in the sport boat fishery are reportedly very good although bank anglers are somewhat limited by the high flow. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: June 25, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Cowlitz and North Fork Lewis rivers. Notwithstanding the provisions of WAC 232-28-619, effective June 25, 2008 until further notice:

(1) Cowlitz River - from the Highway 4 Bridge at Kelso upstream to Mayfield Dam, special daily limit of six hatchery steelhead may be retained.

(2) North Fork Lewis river - from the I-5 Bridge upstream to Merwin Dam, special daily limit of six hatchery steelhead may be retained.

REPEALER

The following sections of the Washington Administrative Code are repealed effective June 25, 2008:

WAC 232-28-61900L Exceptions to statewide rules—Cowlitz River. (08-110)

WAC 232-28-61900M Exceptions to statewide rules—North Fork Lewis River. (08-111)

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

WSR 08-14-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-155—Filed June 25, 2008, 9:00 a.m., effective June 25, 2008, 9:00 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500H; and amending WAC 220-56-255.

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: There is enough halibut quota remaining to provide for another off-shore day of fishing in these areas. This rule conforms to federal action taken by Pacific Fisheries Management Council. 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: June 25, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-25500I Halibut—Seasons—Daily and possession limits. (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

- (a) Catch Record Card Area 2 - Closed - except waters from 47°25.00'N. latitude (Queets River) south to 46°58.00'N latitude and east of 124°30.00'W longitude, open until further notice, 12:01 a.m. through 11:59 p.m., Fridays and Saturdays.
- (b) Catch Record Card Areas 3 and 4 - Open 12:01 a.m. through 11:59 p.m. June 28, 2008.
- (c) Daily limit one halibut. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500H Halibut—Seasons—Daily and possession limits. (08-140)

**WSR 08-14-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-152—Filed June 25, 2008, 1:15 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000L; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: June 25, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

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

- (1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:
 - July 1 through July 2, 2008;
 - July 5 through July 8, 2008;
 - July 12 through July 15, 2008;
 - July 19 through July 22, 2008;
 - July 26 through July 29, 2008;
 - August 2 through August 5, 2008;
 - August 9 through August 12, 2008;
 - August 16 through August 19, 2008;
 - August 23 through August 26, 2008;
 - August 30 through September 2, 2008;
 - September 6 through September 9, 2008;
 - September 13 through September 16, 2008.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Landing and possession limit of 35 Chinook per boat per entire open period for openings from July 1 through September 16 for catch areas 1, 2, 3, and 4.

(4) Landing and possession limit of 25 Coho per boat per entire open period for openings from July 1 through September 16 for catch area 1, 2, 3, and 4.

(5) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. Minimum size for coho salmon is 16 inches in length. It is unlawful to possess coho salmon that do not have a healed adipose fin clip. No chum retention north of Cape Flattery in August and September.

(6) Lawful troll gear is restricted to 6 inch plugs or longer with single point, single shank barbless hooks only.

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

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

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

(10) Mandatory Yelloweye Rockfish Conservation Area - The area is closed in Washington in Marine Catch Area 3 from 48°00.00' N latitude, 125°14.00' W longitude; to 48°02.00' N latitude, 125°14.00' W longitude; to 48°02.00' N latitude, 125°16.50' W longitude; to 48°00.00' N latitude, 125°16.50' W longitude; and connecting back to 48°00.00' N latitude, 125°14.00' W longitude.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. September 18, 2008:

WAC 220-24-04000L All-citizen commercial salmon troll.

WSR 08-14-070 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-156—Filed June 25, 2008, 3:52 p.m., effective June 25, 2008, 3:52 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500I; and amending WAC 220-56-255.

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: Marine Area 5 was inadvertently omitted from the previous emergency regulation. There is enough halibut quota remaining to provide for another offshore day of fishing in these areas. This rule conforms to federal action taken by Pacific Fisheries Management Council. 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: June 25, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-25500J Halibut—Seasons—Daily and possession limits. (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice,

it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(a) Catch Record Card Area 2 - Closed - except waters from 47°25.00'N. latitude (Queets River) south to 46°58.00'N latitude and east of 124°30.00'W longitude, open until further notice, 12:01 a.m. through 11:59 p.m., Fridays and Saturdays.

(b) Catch Record Card Areas 3 and 4 - Open 12:01 a.m. through 11:59 p.m. June 28, 2008.

(c) Catch Record Card Area 5 - Open through July 21, 2008, 12:01 a.m. through 11:59 p.m., Thursdays through Mondays only.

(d) Daily limit one halibut. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500I	Halibut—Seasons—Daily and possession limits. (08-155)
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WSR 08-14-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-157—Filed June 27, 2008, 2:18 p.m., effective June 27, 2008, 2:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000C; and amending WAC 220-56-330.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to align opening dates with the days of the week for the fishing periods. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-33000C Crab—Areas and seasons. Notwithstanding the provisions of WAC 220-56-330, effective immediately until further notice, it is unlawful to fish for crab for personal use in Marine Areas 6, 7, 8-1, 8-2, 9, 10, 11, and 12 except as provided herein:

1) Effective 7:00 a.m. July 2 through September 1, 2008, a person may fish for or possess crab Wednesdays, Thursdays, Fridays and Saturdays in the waters of Area 6, those waters of Area 7 (Sub Area 7 South - San Juan Islands) south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the north shore of Patos Island to the westernmost point of Patos Island, thence due west to the international boundary; westerly of a straight line from the northernmost tip of Sinclair Island through Lummi Rocks to Lummi Island; and west of a line projected from the southeast point of Sinclair Island to the ferry dock at Shannon Point, and waters of Areas 8-1, 8-2, 9, 10, 11, and 12. Except a person may fish for crab August 31 through September 1, 2008, Sunday through Monday.

2) Effective 7:00 a.m. July 16 through September 30, 2008, a person may fish for or possess crab Wednesdays, Thursdays, Fridays and Saturdays in the waters of Area 7 (Sub Area 7 East - Anacortes to Bellingham) south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island and south and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island due west to the international boundary. Except a person may fish for crab August 31 through September 1, 2008, Sunday through Monday.

3) Effective 7:00 a.m. August 13 through September 30, 2008, a person may fish for or possess crab Wednesdays, Thursdays, Fridays and Saturdays in the waters of Area 7 (Sub Area 7 North - Lummi Bay to Point Roberts) north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island and south and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island due west to the international boundary. Except a person may fish for crab August 31 through September 1, 2008, Sunday through Monday.

REPEALER

The following section of the Washington Administrative Code is repealed effective one hour after official sunset on September 30, 2008:

WAC 220-56-33000C Crab—Areas and seasons.

WSR 08-14-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-159—Filed June 27, 2008, 2:22 p.m., effective June 27, 2008, 2:22 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300W.

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 2007-2008 state sea urchin harvest quota share amounts have been taken for the majority of the legal harvest areas. Closure of areas with remaining harvest quota shares prevents potential wastage of harvested sea urchin product, which is highly perishable, during the periods of warm weather experienced during summer months. Closure also prevents potential wastage of post-spawn sea urchin product, which is of lesser quality and value. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2008.

J. P. Koenings
 Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300W Sea urchins. (08-98)

WSR 08-14-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-160—Filed June 27, 2008, 3:35 p.m., effective June 30, 2008, 12:00 p.m.]

Effective Date of Rule: June 30, 2008, 12:00 p.m.

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 220-33-01000L; 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: Sets a short commercial sockeye fishery. The escapement goal of 75,000 sockeye at Bonneville Dam has been exceeded. The non-Indian harvest rate for sockeye is 1%, which will provide for some commercial harvest of sockeye. Season is consistent with the 2008-2017 management agreement. Regulation is consistent with compact action of June 27, 2008. 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: June 27, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000L Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and 220-33-020, 220-33-030, it is unlawful for a person to take or possess salmon, shad, or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections:

1. AREA: 2S - True north/south line through Light #50 near the mouth of the Sandy River, upstream to the commercial fishing boundary near Beacon Rock.

2. SEASON: 12:00 p.m. through 6:00 p.m., June 30, 2008.

3. GEAR: Drift gill nets. 4 1/2-inch maximum mesh size. Must be single wall, unslackened, floater gill net. Multiple Net Rule: It is permissible to have onboard a commercial vessel more than one net, provided the nets are of a mesh size

legal 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.

4. ALLOWABLE SALE: Sockeye, Chinook, shad, and white sturgeon. A maximum of five 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 applies only to mainstem fisheries. (Sturgeon retention in Select Area fisheries is prohibited).

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. June 30, 2008:

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

**WSR 08-14-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-161—Filed June 27, 2008, 3:37 p.m., effective July 1, 2008, 6:00 a.m.]

Effective Date of Rule: July 1, 2008, 6:00 a.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 220-32-05100W; 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: Sets two additional weeks of commercial fishing for treaty tribes. The escapement goals for both summer chinook and sockeye will be achieved. Harvestable numbers of fish are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on June 27, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

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. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act.

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. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; 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 Mak-

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

Date Adopted: June 27, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-32-05100X 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, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, (except as provided in the following subsections) and the Wind River, White Salmon River, Klickitat River, and Drano Lake, except that individuals possessing treaty fishing rights under the Yakima, 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:

1. Open Periods: 6:00 a.m. Tuesday, July 1 to 6:00 p.m. Thursday, July 3, 2008

6:00 a.m. Tuesday, July 8 to 6:00 p.m. Thursday, July 10, 2008

a) Open Areas: Zone 6 (SMCRA 1F, 1G, 1H).

b) Gear: No minimum mesh-size restriction.

2. Open Periods: Immediately until further notice.

a) Open Areas: Zone 6 (SMCRA 1F, 1G, 1H).

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Open Periods: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

a) Open Areas: Wind, White Salmon, and Klickitat rivers.

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Open Periods: Immediately until further notice, and only under lawfully enacted Yakama Nation tribal subsistence fisheries regulations and under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." Is open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries and only when it's concurrent with either commercial gillnet openings or platform gear fisheries in Zone 6 (SMCRA 1F, 1G, 1H).

a) Open Areas: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

5. Allowable sale includes: Chinook, sockeye, coho, steelhead, walleye, shad, and carp. Sturgeon may not be sold. Sturgeon between 42 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only. Sturgeon below Bonneville Dam many not be retained.

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

7. There will be no sanctuary in effect at Spring Creek National Fish Hatchery.

8. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) **Hood River** are those waters along the Oregon side of the Columbia River, and they extend to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the break wall at the west end of the port of Hood River, and 1/2-mile upriver from the east bank.

b) **Herman Creek** are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling, and the other is located on the west bank to the north of the boat ramp.

c) **Deschutes River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) **Umatilla River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) **Big White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2-mile downstream from the west bank, upstream to Light "35."

f) **Wind River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1-1/4 miles downstream from the west bank and 1/2-mile upstream from the east bank.

g) **Klickitat River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad tunnel approximately 1/8-miles downstream from the west bank.

h) **Little White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27," upstream to a marker located approximately 1/2-mile upstream from the eastern shoreline.

9. Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) **Area 1F** (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) **Area 1G** includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) **Area 1H** includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 1, 2008:

WAC 220-32-05100W	Columbia River salmon seasons above Bonneville Dam. (08-150)
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WSR 08-14-093 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-162—Filed June 27, 2008, 4:24 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

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 232-28-61900B and 232-28-61900J; and amending WAC 232-28-619.

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: Closes the summer chinook fishery from Bonneville Dam upstream to the Highway 395 Bridge in Pasco. Allows the retention of sockeye to continue through July 6. The sport guideline for summer chinook is projected to be achieved by June 30, 2008. These fisheries are expected to remain within the allowable guidelines and are consistent with the *U.S. v Oregon* management agreement and associated biological opinion from the National Marine Fisheries Service. There is insufficient time to promulgate permanent regulations. 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 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 Mak-

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

Date Adopted: June 27, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619,

1. Effective immediately through June 28, 2008, adult Chinook retention is allowed from a line projected from Rocky Point on the Washington bank, through Red Buoy 44, to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line), upstream to Bonneville Dam (except for those waters closed under permanent regulations).

2. Effective immediately through July 6, 2008, sockeye retention is allowed from a line projected from Rocky Point on the Washington bank, through Red Buoy 44, to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line), upstream to the Hwy 395 Bridge near Pasco, WA) (except for those waters closed under permanent regulations).

3. Effective immediately through June 30, adult Chinook retention is allowed in the area from Bonneville Dam upstream to the Highway 395 Bridge in Pasco.

4. Effective July 1 through July 31, 2008, it is unlawful to retain Chinook salmon in the area from Bonneville Dam upstream to the Highway 395 Bridge in Pasco.

5. Effective immediately through July 31, 2008, summer Chinook and sockeye retention is allowed from the Highway 395 Bridge in Pasco upstream to Priest Rapids Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900B	Exceptions to statewide rules—Columbia River. (08-143)
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The following section of the Washington Administrative Code is repealed effective August 1, 2008:

WAC 232-28-61900J	Exceptions to statewide rules—Columbia River.
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WSR 08-14-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-158—Filed June 27, 2008, 6:55 p.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900G; 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: Sockeye salmon returns above Rocky Reach Dam are predicted to be in excess of needs for wild fish escapement to the spawning grounds. The population is not listed under the Endangered Species Act (ESA). 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: June 27, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900G Exceptions to statewide rules—Columbia and Okanogan rivers. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective July 1 through October 15, 2008 - Columbia River from Rocky Reach Dam to Wells Dam, sockeye retention is allowed.

(2) Effective July 16 through August 31, 2008 - Columbia River from Wells Dam to Highway 173 Bridge in Brewster, sockeye retention is allowed.

(3) Effective July 1 through October 15, 2008 - Columbia river from Highway 173 in Brewster to Highway 17 in Bridgeport, sockeye retention is allowed.

(4) Effective July 1 through October 15, 2008 - Okanogan River from mouth to Highway 97 Bridge upstream of the mouth, sockeye retention is allowed. Night closure and non-buoyant lure restriction is in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2008:

WAC 232-28-61900G Exceptions to statewide rules—Columbia and Okanogan rivers.

WSR 08-14-097

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 30, 2008, 9:40 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: This emergency implements chapter 245, Laws of 2008, which states: The department shall provide coverage under chapter 74.09 RCW for smoking cessation counseling services, as well as prescription and nonprescription agents when used to promote smoking cessation, so long as such agents otherwise meet the definitions of "covered outpatient drug" in 42 U.S.C. Sec. 1396r-8(k). The department may initiate an individualized inquiry and determine and implement by rule appropriate coverage limitations as may be required to encourage the use of effective, evidence-based services and prescription and nonprescription agents. The department shall track per-capita expenditures for a cohort of clients that receive smoking cessation benefits, and submit a cost-benefit analysis to the legislature on or before January 1, 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-2000 and 388-530-2100.

Statutory Authority for Adoption: Chapter 245, Laws of 2008.

Other Authority: RCW 74.08.090 and 74.09.500.

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

Reasons for this Finding: The department must amend WAC 388-530-2000 and 388-530-2100 via the emergency rule process to implement requirements in chapter 245, Laws of 2008. See Purpose above.

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

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

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

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

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

Date Adopted: June 23, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100; and

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program.

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride varnish for children under the early and periodic screening, diagnosis, and treatment (EPSDT) program.

(d) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

(e) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(f) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions are prohibited for this service as described in WAC 388-501-0169.

(g) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions are prohibited for this service as described in WAC 388-501-0169.

(2) Coverage determinations for the department are decided by:

(a) The department in consultation with federal guidelines; or

(b) The drug use review (DUR) board; and

(c) The department's medical consultants and the department's pharmacist(s).

(3) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction; or

(iv) For cosmetic purposes or hair growth(~~or~~

~~(v) To promote tobacco cessation, except as described in WAC 388-533-0400(20) tobacco cessation for pregnant women)).~~

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

- (f) A product:
- (i) With an obsolete national drug code (NDC) for more than two years;
- (ii) With a terminated NDC;
- (iii) Whose shelf life has expired; or
- (iv) Which does not have an eleven-digit NDC.
- (g) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).
- (h) Free pharmaceutical samples.
- (i) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a department-approved cessation program.

(2) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

WSR 08-14-098
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed June 30, 2008, 9:42 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services, to phase in a seventeen level CARE assessment payment system effective July 1, 2008, as directed by ESHB 2687 (Washington state supplemental operating budget).

Currently, the department assigns a home and community residential client to one of twelve CARE classifications. The development of the seventeen CARE classifications for home and community residential clients will allow the department to tie payment more closely to acuity. Each of the seventeen levels of CARE classifications will be assigned a payment rate.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0080, 388-106-0110, and 388-106-0115.

Statutory Authority for Adoption: ESHB 2687, chapter 329, Laws of 2008.

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: ESHB 2687 directs the department to phase in full implementation of a seventeen level CARE assessment payment system by July 1, 2008.

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 3, 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 3, Repealed 0.

Date Adopted: June 20, 2008.

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0080 How is the amount of long-term care services I can receive in my own home or in a residential facility determined? The amount of long-term care services you can receive in your own home or in a residential facility is determined through a classification system. ~~((Twelve))~~ Seventeen classifications apply to clients served in residential and in-home settings. ~~((Two additional exceptional care groups apply to clients served in in-home settings.))~~ The department has assigned each classification a residential facility daily rate or a base number of hours you can receive in your own home.

AMENDATORY SECTION (Amending WSR 08-10-022, filed 4/25/08, effective 5/26/08)

WAC 388-106-0110 How does the CARE tool evaluate me for the exceptional care classification of ~~((in-home care))~~ the E Group? CARE places you in the exceptional care E Group classifications ~~((for the in-home setting))~~ when the following criteria are met in either diagram 1 or 2:

Diagram 1
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You ((require)) <u>need</u> at least one of the following:
<ul style="list-style-type: none"> ■ External catheter; ■ Intermittent catheter; ■ Indwelling catheter care; ■ Bowel program; ■ Ostomy care; or ■ Total in Self Performance for Toilet Use.
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care <u>when in the in home setting, or provided by AFH/boarding home staff, facility RN/LPN, facility staff or private duty nursing when living in a residential setting:</u>
<ul style="list-style-type: none"> ■ Active range of motion (AROM); or ■ Passive range of motion (PROM).

Diagram 2
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care <u>when in the in home setting, or provided by AFH/boarding home staff, facility RN/LPN, facility staff or private duty nursing when living in a residential setting:</u>
<ul style="list-style-type: none"> ■ Active range of motion (AROM); or ■ Passive range of motion (PROM).
AND
All of the following apply:
<ul style="list-style-type: none"> ■ You require IV nutrition support or tube feeding; ■ Your total calories received per IV or tube was greater than 50%; and ■ Your fluid intake by IV or tube is greater than 2 cups per day.

AND
You need assistance with one of the following, provided by an individual provider, agency provider, a private duty nurse, or through self-directed care <u>when in the in home setting or provided by AFH/boarding home staff, facility RN/LPN, facility staff, a private duty nurse or nurse delegation when living in a residential setting:</u>
<ul style="list-style-type: none"> ■ Dialysis; or ■ Ventilator/respirator.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0115 How does CARE use ((the)) criteria ((of cognitive performance as determined under ~~WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, and ADLs as determined under WAC 388-106-0105~~)) to place me in a classification group for residential facilities? The CARE tool uses the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, ((and)) ADLs as determined under WAC 388-106-0105 and exceptional care under WAC 388-106-0110 to place you into one of the following ((twelve)) seventeen residential classification groups:

((Classification))	((ADL Score))	((Group))
((Group D)) Cognitive performance score = 4-6 and Clinically complex = yes and Mood/behavior = yes or no))	((ADL Score 18-28)) ((ADL Score 13-17)) ((ADL Score 2-12))	((D High (12)) ((D Med (11)) ((D Low (10))
((Group C)) Cognitive performance score = 0-3 and Clinically complex = yes and Mood/behavior = yes or no))	((ADL Score 18-28)) ((ADL Score 9-17)) ((ADL Score 2-8))	((C High (9)) ((C Med (8)) ((C Low (7))
((Group B)) Mood & behavior = Yes and Clinically complex = no and Cognitive performance score = 0-6))	((ADL Score 15-28)) ((ADL Score 5-14)) ((ADL Score 0-4))	((B High (6)) ((B Med (5)) ((B Low (4))

((Classification))		((ADL Score))		((Group))
((Group A Mood & behavior = No and Clinically complex = No and Cognitive performance score = 0-6))		((ADL Score 10-28))		((A High (3)))
		((ADL Score 5-9))		((A Med (2)))
		((ADL Score 0-4))		((A Low (1)))

CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible group to lowest qualifying group.

(1) If you meet the criteria for exceptional care, then CARE will place you in Group E. CARE then further classifies you into:

- (a) Group E High if you have an ADL score of 26-28; or
- (b) Group E Medium if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have a cognitive performance score of 4-6 then you are classified in Group D regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

- (a) Group D High if you have an ADL score of 25-28; or
- (b) Group D Medium-High if you have an ADL score of 18-24; or

or

- (c) Group D Medium if you have an ADL score of 13-17;

or

- (d) Group D Low if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in Group C regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

- (a) Group C High if you have an ADL score of 25-28; or
- (b) Group C Medium-High if you have an ADL score of 18-24; or

or

- (c) Group C Medium if you have an ADL score of 9-17;

or

- (d) Group C Low if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into Group B. CARE further classifies you into:

- (a) Group B High if you have an ADL score of 15-28; or
- (b) Group B Medium if you have an ADL score of 5-14;

or

- (c) Group B Low if you have an ADL score of 0-4.

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in Group B. CARE further classifies you into:

- (a) Group B High if you have a behavior point score 12 or greater; or
- (b) Group B Medium-High if you have a behavior point score greater than 6; or
- (c) Group B Medium if you have a behavior point score greater than 4; or
- (d) Group B Low if you have a behavior point score greater than 1.

(6) If you are not clinically complex and you do not qualify under either mood and behavior criteria, then you are classified in Group A. CARE further classifies you into:

- (a) Group A High if you have an ADL score of 10-28; or
- (b) Group A Medium if you have an ADL score of 5-9;

or

- (c) Group A Low if you have an ADL score of 0-4.

WSR 08-14-099

**EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2008, 9:43 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is amending the following rules to increase the personal needs allowance (PNA) 3.3%, as directed by the Washington state 2007-09 operating budget (SHB 1128, chapter 522, Laws of 2007): WAC 388-515-1505 Financial eligibility requirements for long-term care services under COPES, New Freedom, PACE, MMIP, and WMIP, and 388-106-0225 How do I pay for MPC?

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1505 and 388-106-0225.

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

Other Authority: Washington state 2007-09 operating budget (SHB 1128).

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 Washington state 2007-09 operating budget (SHB 1128, chapter 522, Laws of 2007) increases the PNA 3.3% effective July 1, 2008. A CR-101 was filed as WSR 08-09-012 on April 4, 2008. An emergency rule is necessary while the department completes adoption of 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 2, Repealed 0.

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

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

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

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

Date Adopted: June 20, 2008.

Stephanie E. Schiller
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-106-0225 How do I pay for MPC? (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of forty-one dollars and ((twelve)) forty-four cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of forty-one dollars and ((twelve)) forty-four cents. You keep an additional twenty dollar disregard from non-SSI income;

(c) An SSI-related person under WAC 388-475-0050, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 388-513-1305. You are allowed to keep a personal needs allowance of forty-one dollars and ((twelve)) forty-four cents. You keep an additional twenty dollar disregard from non-SSI income; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

AMENDATORY SECTION (Amending WSR 07-19-127, filed 9/19/07, effective 10/20/07)

WAC 388-515-1505 Financial eligibility requirements for long-term care services under COPES, New Freedom, PACE, MMIP, and WMIP. (1) This section describes the financial eligibility requirements and the rules used to determine a client's participation in the total cost of care for home or community-based long-term care (LTC) services provided under the following programs:

(a) Community options program entry system (COPES);

(b) Program of all-inclusive care for the elderly (PACE);

(c) Medicare/Medicaid integration project (MMIP);

(d) Washington Medicaid integration partnership (WMIP);

(e) New Freedom consumer directed services (New Freedom); and

(f) Hospice services for clients not in a medical institution with gross income at or below the SIL and not eligible for another CN or MN Medicaid program.

(2) To be eligible, a client must:

(a) Meet the program and age requirements for the specific program, as follows:

(i) COPES, per WAC 388-106-0310;

(ii) PACE, per WAC 388-106-0705;

(iii) MMIP waiver services, per WAC 388-106-0725;

(iv) WMIP waiver services, per WAC 388-106-0750;

(v) New Freedom, per WAC 388-106-1410; or

(vi) Hospice, per chapter 388-551 WAC.

(b) Meet the aged, blind or disability criteria of the Supplemental Security Income (SSI) program as described in WAC 388-475-0050(1);

(c) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(d) Be residing in a medical facility as defined in WAC 388-500-0005, or likely to be placed in one within the next thirty days in the absence of home or community-based LTC services provided under one of the programs listed in subsection (1) of this section;

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of home or community-based LTC services and be approved for a plan of care as described in subsection (2)(a);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(i) Meet the resource and income requirements described in subsections (3), (4), and (5) or be an SSI beneficiary not subject to a penalty period as described in subsection (2)(h).

(3) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards.

(4) Excess resources are reduced in an amount equal to medical expenses incurred by the institutional client as described in WAC 388-513-1350 and:

(a) Must result in countable resources being at or below the resource standard in WAC 388-513-1350(1).

(b) If remaining resources are over the standard, the client is ineligible.

(5) Nonexcluded income must be at or below the SIL (300% of the federal benefit rate (FBR)) and is allocated in the following order:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Maintenance and personal needs allowances as described in subsection (7), (8), (9), (10), and (11) of this section;

(c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(d) Income garnished for child support or withheld according to a child support order in the month of the garnishment (for current and back support):

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

(ii) Is not counted as the child's income when determining the family allocation amount.

(e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (6) of this section. This amount:

(i) Is allowed only to the extent that the client's income is made available to the community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:

(I) Rent;

(II) Mortgage;

(III) Taxes and insurance;

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

(V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;

(VI) LESS the standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(VII) Is reduced by the community spouse's gross countable income.

(f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:

(i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income;

(ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

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

(g) Medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(6) The amount allocated to the community spouse may be greater than the amount in subsection (5)(e) only when:

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

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

(7) A client who receives SSI, and lives at home as defined in WAC 388-106-0010 does not use income to participate in the cost of personal care.

(8) A client who receives SSI and lives in an enhanced adult residential center (EARC), adult family home (AFH) or assisted living (AL) does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty-two dollars and ~~((seventy-eight))~~ seventy-nine cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty-two dollars and ~~((seventy-eight))~~ seventy-nine cents.

(9) A client who is eligible to receive CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives at home, defined in WAC 388-106-0010, does not use income to participate in the cost of personal care.

(10) A client who is eligible to receive CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives in an EARC, AFH or AL does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty-two dollars and ~~((seventy-eight))~~ seventy-nine cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty-two dollars and ~~((seventy-eight))~~ seventy-nine cents.

(11) An institutionalized SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES, New Freedom, PACE, MMIP, or WMIP services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPES, New Freedom, PACE, MMIP, or WMIP.

(b) In an EARC, AFH, or AL, retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of sixty-two dollars and ~~((seventy-eight))~~ seventy-nine cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of room and board. (Refer to subsection (14) in this section for allocation of the balance of income remaining over maintenance needs.)

(12) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

(13) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections (7), (8), (9), (10), (11), and (12).

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (5)(a); and

(c) Guardianship fees and administrative costs in subsection (5)(c).

(14) The client's remaining income after the allocations described in subsections (5) through (12) is the client's responsibility in the cost of care.

**WSR 08-14-100
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2008, 9:44 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The purpose of this rule change is to implement the seventeen level medicaid payment system for adult family homes (AFH) and licensed boarding homes with contracts to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39.030 and 18.20.290.

Other Authority: Section 206(16), chapter 329, Laws of 2008.

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 implements section 929, chapter 329, Laws of 2008, states, "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

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; and Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: June 20, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-19-017, filed 9/8/06, effective 10/9/06)

WAC 388-105-0005 The daily Medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a Medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low (1)	\$(65.30) <u>69.22</u>	\$(70.41) <u>74.64</u>	\$(46.18) <u>48.95</u>	\$(46.18) <u>48.95</u>	\$(46.82) <u>48.32</u>
A Med (2)	\$(70.74) <u>74.95</u>	\$(75.82) <u>80.37</u>	\$(52.40) <u>55.54</u>	\$(52.40) <u>55.54</u>	\$(53.13) <u>54.83</u>
A High (3)	\$(79.34) <u>84.10</u>	\$(84.45) <u>89.52</u>	\$(66.92) <u>61.00</u>	\$(66.92) <u>61.00</u>	\$(59.45) <u>61.35</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Low (4)	\$(65.30) 69.22	\$(70.41) 74.64	\$(46.18) 48.95	\$(46.18) 48.95	\$(46.82) 48.56
B Med (5)	\$(72.87) 77.24	\$(77.98) 82.66	\$(58.62) 62.14	\$(58.62) 62.14	\$(59.45) 61.66
B ((High)) Med H (6)	\$(86.88) 87.48	\$(91.99) 92.90	\$(75.23) 66.07	\$(75.23) 66.07	\$(67.85) 66.06
B High (7)	<u>\$92.09</u>	<u>\$97.51</u>	<u>\$75.53</u>	<u>\$75.53</u>	<u>\$75.53</u>
C Low ((7)) (8)	\$(70.74) 74.95	\$(75.82) 80.37	\$(52.40) 55.54	\$(52.40) 55.54	\$(53.13) 54.83
C Med ((8)) (9)	\$(79.34) 84.10	\$(84.45) 89.52	\$(66.92) 69.72	\$(66.92) 69.72	\$(67.85) 70.02
C ((High (9))) Med H (10)	\$(98.77) 104.70	\$(103.88) 110.12	\$(87.68) 92.94	\$(87.68) 92.94	\$(88.89) 91.73
C High (11)	<u>\$105.74</u>	<u>\$111.16</u>	<u>\$93.82</u>	<u>\$93.82</u>	<u>\$93.01</u>
D Low ((10)) (12)	\$(72.87) 77.24	\$(77.98) 82.66	\$(58.62) 75.07	\$(58.62) 75.07	\$(67.85) 71.38
D Med ((11)) (13)	\$(79.34) 85.82	\$(84.45) 91.24	\$(66.92) 86.98	\$(66.92) 86.98	\$(76.28) 87.36
D High ((12)) H (14)	\$(98.77) 110.98	\$(103.88) 116.40	\$(87.68) 110.61	\$(87.68) 110.61	\$(88.89) 105.12
D High (15)	<u>\$119.59</u>	<u>\$125.01</u>	<u>\$119.59</u>	<u>\$119.59</u>	<u>\$119.69</u>
E Med (16)	<u>\$144.53</u>	<u>\$149.95</u>	<u>\$144.53</u>	<u>\$144.53</u>	<u>\$144.63</u>
E High (17)	<u>\$169.47</u>	<u>\$174.89</u>	<u>\$169.47</u>	<u>\$169.47</u>	<u>\$169.57</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low (1)	\$(59.90) 63.49	\$(64.54) 68.41	\$(46.18) 48.95	\$(46.18) 48.95	\$(46.82) 48.32
A Med (2)	\$(63.15) 66.94	\$(67.79) 71.86	\$(50.32) 53.34	\$(50.32) 53.34	\$(51.03) 52.66
A High (3)	\$(77.18) 81.81	\$(81.82) 86.73	\$(63.81) 58.17	\$(63.81) 58.17	\$(56.28) 58.08
B Low (4)	\$(59.90) 63.49	\$(64.54) 68.41	\$(46.18) 48.95	\$(46.18) 48.95	\$(46.82) 48.56
B Med (5)	\$(68.54) 72.65	\$(73.18) 77.57	\$(55.51) 58.84	\$(55.51) 58.84	\$(56.28) 58.37

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B ((High))	\$((84.73))	\$((89.37))	\$((71.08))	\$((71.08))	\$((64.70))
Med H (6)	<u>82.29</u>	<u>87.21</u>	<u>62.57</u>	<u>62.57</u>	<u>62.60</u>
B High (7)	<u>\$89.81</u>	<u>\$94.73</u>	<u>\$73.40</u>	<u>\$73.40</u>	<u>\$73.40</u>
C Low ((7)) (8)	\$((63.15))	\$((67.79))	\$((50.32))	\$((50.32))	\$((51.03))
	<u>66.94</u>	<u>71.86</u>	<u>53.56</u>	<u>53.56</u>	<u>53.05</u>
C Med ((8)) (9)	\$((77.18))	\$((81.82))	\$((63.81))	\$((63.81))	\$((64.70))
	<u>81.81</u>	<u>86.73</u>	<u>68.82</u>	<u>68.82</u>	<u>68.31</u>
C ((High (9)))	\$((95.52))	\$((100.16))	\$((81.45))	\$((81.45))	\$((82.59))
Med H (10)	<u>101.25</u>	<u>106.17</u>	<u>86.34</u>	<u>86.34</u>	<u>85.23</u>
C High (11)	<u>\$102.26</u>	<u>\$107.18</u>	<u>\$91.84</u>	<u>\$91.84</u>	<u>\$90.43</u>
D Low ((10)) (12)	\$((68.54))	\$((73.18))	\$((55.51))	\$((55.51))	\$((64.70))
	<u>72.65</u>	<u>77.57</u>	<u>74.04</u>	<u>74.04</u>	<u>69.80</u>
D Med ((11)) (13)	\$((77.18))	\$((81.82))	\$((63.81))	\$((63.81))	\$((72.06))
	<u>83.48</u>	<u>88.40</u>	<u>85.24</u>	<u>85.24</u>	<u>85.01</u>
D ((High (12)))	\$((95.52))	\$((100.16))	\$((81.45))	\$((81.45))	\$((82.59))
Med H (14)	<u>107.33</u>	<u>112.25</u>	<u>107.87</u>	<u>107.87</u>	<u>101.92</u>
D High (15)	<u>\$116.30</u>	<u>\$121.22</u>	<u>\$116.30</u>	<u>\$116.30</u>	<u>\$115.79</u>
E Med (16)	<u>\$140.04</u>	<u>\$144.96</u>	<u>\$140.04</u>	<u>\$140.04</u>	<u>\$139.53</u>
E High (17)	<u>\$163.78</u>	<u>\$168.70</u>	<u>\$163.78</u>	<u>\$163.78</u>	<u>\$163.27</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low (1)	\$((58.83))	\$((63.77))	\$((46.18))	\$((46.18))	\$((46.82))
	<u>62.36</u>	<u>67.60</u>	<u>48.95</u>	<u>48.95</u>	<u>48.32</u>
A Med (2)	\$((63.15))	\$((68.09))	\$((49.29))	\$((49.29))	\$((49.98))
	<u>66.94</u>	<u>72.18</u>	<u>52.25</u>	<u>52.25</u>	<u>51.58</u>
A High (3)	\$((77.18))	\$((82.12))	\$((62.78))	\$((62.78))	\$((55.24))
	<u>81.81</u>	<u>87.05</u>	<u>57.23</u>	<u>57.23</u>	<u>57.01</u>
B Low (4)	\$((58.83))	\$((63.77))	\$((46.18))	\$((46.18))	\$((46.82))
	<u>62.36</u>	<u>67.60</u>	<u>48.95</u>	<u>48.95</u>	<u>48.56</u>
B Med (5)	\$((68.54))	\$((73.48))	\$((54.48))	\$((54.48))	\$((55.24))
	<u>72.65</u>	<u>77.89</u>	<u>57.75</u>	<u>57.75</u>	<u>57.29</u>
B ((High))	\$((84.73))	\$((89.67))	\$((69.00))	\$((69.00))	\$((63.66))
Med H (6)	<u>82.29</u>	<u>87.53</u>	<u>61.40</u>	<u>61.40</u>	<u>61.38</u>
B High (7)	<u>\$89.81</u>	<u>\$95.05</u>	<u>\$69.42</u>	<u>\$69.42</u>	<u>\$69.42</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
C Low ((7)) (8)	\$((63.15)) 66.94	\$((68.09)) 72.18	\$((49.29)) 52.25	\$((49.29)) 52.25	\$((49.98)) 51.58
C Med ((8)) (9)	\$((77.18)) 81.81	\$((82.12)) 87.05	\$((62.78)) 65.05	\$((62.78)) 65.05	\$((63.66)) 65.70
C ((High-9)) Med H (10)	\$((95.52)) 101.25	\$((100.46)) 106.49	\$((78.34)) 83.04	\$((78.34)) 83.04	\$((79.44)) 81.98
C High (11)	102.26	107.50	86.81	86.81	85.52
D Low ((10)) (12)	\$((68.54)) 72.65	\$((73.48)) 77.89	\$((54.48)) 69.99	\$((54.48)) 69.99	\$((63.66)) 66.01
D Med ((11)) (13)	\$((77.18)) 83.48	\$((82.12)) 88.72	\$((62.78)) 80.57	\$((62.78)) 80.57	\$((69.96)) 80.39
D ((High-12)) Med H (14)	\$((95.52)) 107.33	\$((100.46)) 112.57	\$((78.34)) 101.96	\$((78.34)) 101.96	\$((79.44)) 96.37
D High (15)	109.93	115.17	109.93	109.93	109.48
E Med (16)	132.36	137.60	132.36	132.36	131.92
E High (17)	154.80	160.04	154.80	154.80	154.36

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 08-14-101
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed June 30, 2008, 9:45 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is proposing to amend WAC 388-436-0050 to revise the payment standards and maximum earned income limits for the consolidated emergency assistance program (CEAP) to match the 3% increase for temporary assistance for needy families (TANF), state family assistance (SFA) and refugee cash assistance (RCA), which go into effect July 1, 2008. An increase for TANF assistance was mandated in ESHB 2687, section 207 (1)(e).

Citation of Existing Rules Affected by this Order: Amending WAC 388-426-0050.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 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 department is increasing the CEAP payment to match the increase outlined in ESHB 2687 for TANF, SFA and RCA. The department is going

through the regular rule filing process. A CR-101 was filed on May 7, 2008, as WSR 08-10-101.

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

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

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

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

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

Date Adopted: June 5, 2008.

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for CEAP assistance, the assistance unit's nonexcluded income, minus allowable deductions, must be less than ninety percent of the TANF payment standard for households with shelter costs. The net income limit for CEAP assistance units is:

Assistance Unit Members	Net Income Limit
6	((756)) <u>779</u>
7	((873)) <u>900</u>
8 or more	((967)) <u>996</u>

Assistance Unit Members	Net Income Limit
1	\$ ((314)) <u>323</u>
2	((396)) <u>407</u>
3	((491)) <u>505</u>
4	((577)) <u>594</u>
5	((666)) <u>685</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, for households with shelter costs as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need Item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	\$ ((211)) <u>217</u>	\$ ((268)) <u>276</u>	\$ ((332)) <u>341</u>	\$ ((391)) <u>402</u>	\$ ((450)) <u>463</u>	\$ ((511)) <u>526</u>	\$ ((583)) <u>600</u>	\$ ((645)) <u>664</u>
Shelter	((258)) <u>265</u>	((325)) <u>334</u>	((404)) <u>416</u>	((476)) <u>490</u>	((548)) <u>564</u>	((621)) <u>639</u>	((719)) <u>740</u>	((795)) <u>818</u>
Clothing	((30)) <u>31</u>	((38)) <u>39</u>	((47)) <u>48</u>	((56)) <u>57</u>	((64)) <u>65</u>	((73)) <u>75</u>	((83)) <u>85</u>	((94)) <u>96</u>
Minor Medical Care	((179)) <u>184</u>	((228)) <u>335</u>	((282)) <u>290</u>	((332)) <u>341</u>	((382)) <u>393</u>	((432)) <u>444</u>	((501)) <u>516</u>	((554)) <u>570</u>
Utilities	((87)) <u>89</u>	((110)) <u>113</u>	((136)) <u>140</u>	((160)) <u>164</u>	((184)) <u>189</u>	((210)) <u>216</u>	((243)) <u>250</u>	((268)) <u>276</u>
Household maintenance	((64)) <u>65</u>	((81)) <u>83</u>	((100)) <u>103</u>	((118)) <u>121</u>	((136)) <u>140</u>	((155)) <u>159</u>	((178)) <u>183</u>	((197)) <u>202</u>
Job related transportation	((349)) <u>359</u>	((440)) <u>453</u>	((546)) <u>562</u>	((642)) <u>661</u>	((740)) <u>762</u>	((841)) <u>866</u>	((971)) <u>1000</u>	((1075)) <u>1107</u>

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

(a) The assistance unit's net income, as determined under subsection (1) of this section;

(b) Cash on hand, if not already counted as income; and

(c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

WSR 08-14-102
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2008, 9:46 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is proposing to amend by emergency adoption WAC 388-478-0020 and 388-478-0035. The two WACs are being amended to comply with section 207 (1)(e), chapter 329, Laws of 2008 (ESHB 2687) requiring a 3% increase in the payment standards for temporary

assistance for needy families (TANF), state family assistance (SFA) and refugee cash assistance (RCA).

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0020 and 388-478-0035.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Other Authority: Section 207 (1)(e), chapter 329, Laws of 2008 (ESHB 2687).

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: Section 207 (1)(e), chapter 329, Laws of 2008 (ESHB 2687) provides for a 3% increase in payment standards for TANF, SFA and RCA. The department has filed a CR-101 for the regular adoption of this WAC change on April 9, 2008, as WSR 08-09-040.

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

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

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

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

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

Date Adopted: June 5, 2008.

Stephanie E. Shriller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-478-0020 Payment standards for TANF, SFA, ((GA-S, GA-H)) and RCA. (1) The payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), ((general assistance for pregnant women (GA-S), general assistance for children (GA-H))) and refugee cash assistance (RCA) assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$((349)) <u>359</u>	6	\$((841)) <u>866</u>
2	((440)) <u>453</u>	7	((971)) <u>1,000</u>
3	((546)) <u>562</u>	8	((1,075)) <u>1,107</u>
4	((642)) <u>661</u>	9	((1,180)) <u>1,215</u>

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
5	((740)) <u>762</u>	10 or more	((1,283)) <u>1,321</u>

(2) The payment standards for TANF, SFA, ((GA-S, GA-H)) and RCA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$((212)) <u>218</u>	6	\$((511)) <u>526</u>
2	((268)) <u>276</u>	7	((591)) <u>608</u>
3	((332)) <u>341</u>	8	((654)) <u>673</u>
4	((391)) <u>402</u>	9	((718)) <u>739</u>
5	((451)) <u>464</u>	10 or more	((780)) <u>803</u>

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-478-0035 Maximum earned income limits for TANF, ((and)) SFA and RCA. To be eligible for temporary assistance for needy families (TANF), ((or)) state family assistance (SFA), or refugee cash assistance (RCA), a family's gross earned income must be below the following levels:

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Earned Income Level
1	\$((698)) <u>718</u>	6	\$((1,682)) <u>1,732</u>
2	((880)) <u>906</u>	7	((1,942)) <u>2,000</u>
3	((1,092)) <u>1,124</u>	8	((2,150)) <u>2,214</u>
4	((1,284)) <u>1,322</u>	9	((2,360)) <u>2,430</u>
5	((1,480)) <u>1,524</u>	10 or more	((2,566)) <u>2,642</u>

WSR 08-14-103
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 30, 2008, 9:47 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is proposing to amend by emergency adoption WAC 388-478-0005 Cash assistance need and payment standards and grant maximum, to comply with ESHB 2687, section 207 (1)(e) requiring a 3% increase in the payment standards for TANF, SFA and RCA.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Other Authority: ESHB 2687, section 207 (1)(e).

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: ESHB 3687 provides for a 3% increase in payment standards for TANF, SFA and RCA and requires an increase in the maximum payment allowed. The department is filing a CR-101 for the regular adoption of this WAC change.

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

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

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

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

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

Date Adopted: June 20, 2008.

Stephanie E. Schiller
Rules Coordinator

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

WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC 388-478-0040 and 388-478-0045).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on their obligation to pay for shelter.

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are deter-

mined using standards for assistance units with an obligation to pay shelter costs.

(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.

(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.

(4) The monthly grant for an assistance unit containing eight or more persons cannot exceed the grant maximum (~~of one thousand seven hundred fifty dollars~~) payment standard for a family of eight listed in WAC 388-478-0020(1).

WSR 08-14-104

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2008, 9:48 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is amending by emergency rule WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?

This amendment is necessary to update the state supplemental payment standard for residents of medical institutions effective July 2008 monthly issuance to meet requirements of the state budget as allowed under ESHB 2687, section 207.

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, and 74.08A.320.

Other Authority: ESHB 2687.

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 amendment needs to be made via an emergency rule filing because the ESHB 2687, section 8 requires the state supplemental payment update to be effective by July 1, 2008.

The department is concurrently working on the regular rule-filing process. A CR-101 was filed on April 21, 2008, as WSR 08-09-106 and a CR-102 was filed on June 12, 2008, as WSR 08-13-047.

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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 20, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-022, filed 10/26/07, effective 11/26/07)

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 federal 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)	\$46.00
Individual (blind as determined by SSA)	\$46.00
Individual with an ineligible spouse	\$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	\$((25-45)) <u>27.28</u>

WSR 08-14-106
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 30, 2008, 9:50 a.m., effective July 1, 2008]

Effective Date of Rule: July 1, 2008.

Purpose: The department is creating new WAC 388-96-758 and 388-96-759 to increase compensation for low-wage workers in nursing homes beginning July 1, 2008, and to establish a system of reporting to ensure that the low wage add-on increased the compensation/benefits for low-wage workers, increased staff, and/or paid for wage compression when low wage workers' compensation was increased.

Statutory Authority for Adoption: Chapter 74.46 RCW.

Other Authority: Section 206(9), chapter 329, Laws of 2008.

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

Reasons for this Finding: New section 929, chapter 329, Laws of 2008, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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 2, 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 2, Amended 0, Repealed 0.

Date Adopted: June 26, 2008.

Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-96-758 Add-on for low-wage workers. (1)

Under section 206, chapter 329, Laws of 2008, effective July 1, 2008, the department will grant a low wage add on payment not to exceed one dollar and fifty seven cents per resident day to any nursing home provider that has indicated a desire to receive the add on by May 30, 2008. A nursing home may use the add on only for in house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars per hour

wage was less than fifteen dollars in calendar year 2006, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;
- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low wage workers.

(2) A nursing home that received effective July 1, 2008 a low wage add on under chapter 329, Laws of 2008 shall report to the department its expenditure of that add on by:

- (a) Completing Cost Report Schedule L 1; and
- (b) Returning it to the department by January 31, 2009.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add on. When the department is unable or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add on to gross dollars spent.

(5) When the department determines that the low wage add on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) If the legislature extends the low wage worker add on in the state fiscal year 2010 budget, nursing home providers will have the opportunity again to elect whether they wish to receive the add on in their July 1, 2009 rates.

NEW SECTION

WAC 388-96-759 Standards for low-wage workers add-on. (1) In accordance with WAC 388-96-758, the low wage worker add on must be used to provide increases in wages, benefits, or staffing levels, or to address resulting wage compression beginning on or after the date on which the add on is first included in the rate. For the first year, that date is July 1, 2008. The add on may not be used after July 1 to pay for increases beginning before that date.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement, and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low wage worker category, either in the organizational structure (for example, it supervises the low wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add on to increase wages or benefits before it may use any of the add on to address any wage compression caused by such increase.

(5) A facility may use the add on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs per RCW 74.46.410 (2)(x).

**WSR 08-14-107
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-163—Filed June 30, 2008, 10:14 a.m., effective July 10, 2008]

Effective Date of Rule: July 10, 2008.

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: Amending WAC 232-28-619.

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: It is estimated that 8,939 sturgeon were harvested by the estuary sturgeon retention fishery

which closed June 25, leaving 4,204 sturgeon remaining from the 13,143 fish 2008 harvest guideline. The adopted fishery extension for the mainstem Columbia River downstream of the Wauna powerlines is expected to result in a catch that remains within the harvest guideline set forth in the joint state management plan concerning lower Columbia River sturgeon management and fisheries. There is insufficient time to promulgate permanent rules.

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 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: June 30, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Columbia River

(a) Effective 12:01 a.m. July 10, 2008 through July 12, 2008, it is lawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40,

- Effective 12:01 a.m. July 13, 2008 through July 16, 2008, it is unlawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40,

- Effective 12:01 a.m. July 17, 2008 through July 19, 2008, it is lawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40,

- Effective 12:01 a.m. July 20, 2008 through July 25, 2008, it is unlawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40,

- Effective 12:01 a.m. July 26, 2008 through July 27, 2008, it is lawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40,

- Effective 12:01 a.m. July 28, 2008, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40.

WSR 08-14-108

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 30, 2008, 11:21 a.m., effective June 30, 2008, 11:21 a.m.]

Effective Date of Rule: Immediately.

Purpose: Adoption of new WAC 390-05-196 to clarify the difference between bona fide political parties and other political committees for the purpose of contribution limitations following of the United States Supreme Court ruling upholding Washington's top two primary system.

Statutory Authority for Adoption: RCW 42.17.370.

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: Recently, the United States Supreme Court upheld Washington's top two primary system which was enacted into law by the voters in 2004 through the passage of I-872. Under the new primary system, chapter 29A.20 RCW which has been relied on to distinguish bona fide political parties from other political committees has been effectively repealed and chapter 42.17 RCW has not been amended by the legislature to remove reference to chapter 29A.20 RCW. To preserve the general welfare and given the timing restriction for rule making in RCW 42.17.370(1), the new rule is needed immediately for the 2008 election season to clarify which minor party organizations satisfy the definition of bona fide political party in RCW 42.17.020.

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 1, 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 26, 2008.

Vicki Rippie
Executive Director

NEW SECTION

WAC 390-05-196 Bona fide political party—Application of term. An organization that filed a valid certificate of nomination with the secretary of state or a county elections official under chapter 29A.20 RCW in any year from 2002 through 2007 is deemed to have satisfied the definition of bona fide political party in RCW 42.17.020.

WSR 08-14-109**EMERGENCY RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed June 30, 2008, 11:22 a.m., effective June 30, 2008, 11:22 a.m.]

Effective Date of Rule: Immediately.

Purpose: Adoption of new WAC 390-05-274 to clarify the term "party affiliation" and reference to "party," "political party" and similar terms in Title 390 WAC.

Statutory Authority for Adoption: RCW 42.17.370.

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: Recently, the United States Supreme Court upheld Washington's top two primary system which was enacted into law by the voters in 2004 through the passage of I-872. Under the new primary system a candidate's party designation on the declaration of candidacy form indicates the candidate's party preference only, and does not indicate formal affiliation between the candidate and the party specified, or reflect an endorsement or support from that party. To preserve the general welfare and given the timing restriction for rule making in RCW 42.17.370(1), the new rule is needed immediately for the 2008 election cycle to clarify the term "party affiliation" found in two sections of chapter 42.17 RCW and Title 390 WAC.

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 1, 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 26, 2008.

Vicki Rippie
Executive Director

NEW SECTION

WAC 390-05-274 Party affiliation—Party preference. (1) "Party affiliation" as that term is used in chapter 42.17 RCW and Title 390 WAC means the candidate's party preference as expressed on his or her declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

(2) A reference to "political party affiliation," "political party," or "party" on disclosure forms adopted by the com-

mission and in Title 390 WAC refers to the candidate's self-identified party preference.

WSR 08-14-110**EMERGENCY RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed June 30, 2008, 11:24 a.m., effective June 30, 2008, 11:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: New rule WAC 390-05-222 defining domestic partner for the purposes of chapter 42.17 RCW and Title 390 WAC to reflect legislative changes found in chapter 6, Laws of 2008.

Statutory Authority for Adoption: RCW 42.17.370.

Other Authority: 2SHB 3104, section 1303.

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: In adopting 2SHB 3104 (chapter 6, Laws of 2008) the legislature defined domestic partner as part of an individual's "immediate family." The 2008 election season is currently underway and a definition of "domestic partner" is needed immediately for the purposes of chapter 42.17 RCW and Title 390 WAC in order to preserve the general welfare and accommodate the timing restrictions in RCW 42.17.370(1).

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 1, 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 1, Amended 0, Repealed 0.

Date Adopted: June 26, 2008.

Vicki Rippie
Executive Director

NEW SECTION

WAC 390-05-222 Domestic partner—Definition. "Domestic partner" or "domestic partners," as those terms are used in chapter 42.17 RCW and Title 390 WAC, means "state registered domestic partners" as defined in RCW 26.60.020 (1).

WSR 08-14-111

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 30, 2008, 11:26 a.m., effective June 30, 2008, 11:26 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend WAC 390-05-275 to reference new WAC 390-05-196 when defining party organization.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-275.

Statutory Authority for Adoption: RCW 42.17.370.

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: Given the rule-making instruction and timing restriction in RCW 42.17.370(1) and in order to preserve the general welfare for the 2008 election season, WAC 390-05-196 needs to be amended immediately to clarify which organizations satisfy the definition of bona fide political party under RCW 42.17.020, and to reflect the definition will be approved through new emergency WAC 390-05-196 Bona fide political party—Application of term. These emergency rules are a result of the recent United States Supreme Court decision upholding the Washington top two primary system which was enacted into law by the voters in 2004 through the passage of I-872.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: June 26, 2008.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 07-08-044, filed 3/28/07, effective 4/28/07)

WAC 390-05-275 Definition—Party organization. "Party organization," as that term is used in chapter 42.17 RCW and Title 390 WAC, means a bona fide political party as defined in RCW 42.17.020 and applied in WAC 390-05-196.

WSR 08-14-112

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 30, 2008, 11:28 a.m., effective June 30, 2008, 11:28 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend WAC 390-05-515 to more specifically address (and exclude) entities that describe their customers as "members" but their relationship is more akin to that of seller-buyer and to provide an additional factor to determine membership.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-515.

Statutory Authority for Adoption: RCW 42.17.370.

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: RCW 42.17.370(1) directs that "Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year[.]" The amendment preserves the general welfare by clarifying the meaning of "member" for the 2008 election cycle.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: June 26, 2008.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-05-515 Member. In determining whether a communication is to a "member" as that term is used in RCW 42.17.020 and 42.17.100, and for the purposes of RCW 42.17.105(8) and 42.17.640:

(1) The commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization including whether members have the right to vote for:

(a) Election of directors or officers; or

(b) Changes to the articles or bylaws; or

(c) The disposition of all or substantially all of the assets of the organization or on a merger or dissolution.

A required payment of a predetermined amount of membership dues is also a factor; however, an organization will not be considered a membership organization if it is primarily a commercial entity or for-profit entity selling products to customers even though it may refer to its customers as "members."

(3) If a membership organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134 (e)-(g), the commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020 (15)(b)(v) and (21)(g), unless the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that will be made by the commission on a case-by-case basis as necessary.

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider whether any distribution to nonmembers is incidental and isolated.

WSR 08-14-113

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed June 30, 2008, 11:30 a.m., effective June 30, 2008, 11:30 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend WAC 390-17-305 to clarify that candidates can use, as personal funds of the candidate, his or her portion of assets owned jointly with a domestic partner.

Citation of Existing Rules Affected by this Order: Amending WAC 390-17-305.

Statutory Authority for Adoption: RCW 42.17.370.

Other Authority: 2SHB 3104, section 1303.

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: In adopting 2SHB 3104 (chapter 6, Laws of 2008) the legislature defined domestic partner as part of an individual's "immediate family." To preserve the general welfare and given the timing restriction for rule

making in RCW 42.17.370(1), the amended rule is needed immediately for the 2008 election season to clarify that assets owned jointly with a domestic partner may also be used as personal funds of a candidate.

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

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

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

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

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

Date Adopted: June 26, 2008.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 93-16-064, filed 7/30/93, effective 8/30/93)

WAC 390-17-305 Personal funds of a candidate. (1)

The personal funds of a candidate include:

(a) Assets which the candidate has legal access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(b) Income from employment;

(c) Dividends and proceeds from stocks and other investments;

(d) Income from trusts, if established before candidacy;

(e) Income from trusts established from bequests, even if established after candidacy;

(f) Personal gifts, if customarily received; and

(g) Proceeds from lotteries and similar games of chance.

(2) A candidate may also use, as personal funds, his or her portion of assets owned jointly with a spouse or domestic partner. If the candidate's financial interest is not specified, then the candidate's share is deemed to be half the value of the asset.

(3) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. Such funds are considered a contribution under chapter 42.17 RCW unless the loan meets the exemption provided in RCW 42.17.720(3).