

**WSR 09-01-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-300—Filed December 3, 2008, 2:41 p.m., effective December 3, 2008, 2:41 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottomfish, while reserving brood stock for future fisheries. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 3, 2008.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 220-44-05000Z Coastal bottomfish catch limits.** Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 73, Number 231, published on December 1, 2008. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44

WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

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

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

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

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000Y Coastal bottomfish catch limits. (08-272)

**WSR 09-01-006  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-302—Filed December 3, 2008, 2:51 p.m., effective December 3, 2008, 2:51 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900X.

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: Beda, Brookies and the Desert lakes were not treated, and this rule is needed to revert to permanent rules. There is insufficient time to adopt 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: December 3, 2008.

Phil Anderson  
for Jeff Koenings  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900X Washington game fish—  
Freshwater exceptions to  
statewide rules. (08-221)

**WSR 09-01-011  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-303—Filed December 4, 2008, 3:02 p.m., effective December 6, 2008]

Effective Date of Rule: December 6, 2008.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

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

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

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

Date Adopted: December 4, 2008.

J. P. Koenings  
Director

**NEW SECTION**

**WAC 220-52-07300Z Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective December 6, 2008 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, 4, 6 and 7 are open only on Monday and Tuesday of each week. The maximum daily landing of green sea urchins allowed in Sea Urchin Districts 1 and 2 is 1,000 pounds per valid designated sea urchin harvest vessel.

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week. Sea

Urchin District 4 is only open on Monday through Thursday of each week.

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

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective December 6, 2008:

WAC 220-52-07300Y Sea urchins. (08-285)

**WSR 09-01-013  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-304—Filed December 4, 2008, 3:39 p.m., effective December 6, 2008]

Effective Date of Rule: December 6, 2008.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900T; 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: Based upon field observations, salmon have finished spawning. Hatchery winter run steelhead are available for harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 4, 2008.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900T Exceptions to statewide rules—Grays River (Wahkiakum Co.)** Notwithstanding the provisions of WAC 232-28-619, effective December 6, 2008 through December 14, 2008, a person may fish for or possess steelhead in waters of the Grays River from the Highway 4 Bridge upstream to South Fork and in the West Fork Grays River, from the mouth to the hatchery intake/foot-bridge. Daily limit of two hatchery steelhead, release wild steelhead.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective December 15, 2008:

WAC 232-28-61900T Exceptions to statewide rules—Grays River (Wahkiakum Co.)

**WSR 09-01-018  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-301—Filed December 5, 2008, 2:57 p.m., effective December 15, 2008]

Effective Date of Rule: December 15, 2008.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The Kendall Creek Hatchery in recent years has been unable to secure sufficient eggs from returning hatchery winter steelhead to meet basin production goals. Closure of the fishery is needed to collect sufficient fish to meet egg-take needs. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 5, 2008.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900S Exceptions to statewide rules—North Fork Nooksack River.** Notwithstanding the provisions of WAC 232-28-619, effective December 15, 2008, until further notice, it is unlawful to fish in those waters of the North Fork Nooksack River from the yellow post located at the upstream-most corner of the hatchery grounds approximately 1,000 feet upstream of the mouth of Kendall Creek, downstream to the Mosquito Lake Road Bridge.

**WSR 09-01-019**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-305—Filed December 5, 2008, 2:58 p.m., effective December 11, 2008, 12:01 p.m.]

Effective Date of Rule: December 11, 2008, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

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

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

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

Date Adopted: December 5, 2008.

J. P. Koenings  
Director

#### NEW SECTION

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

1. Effective 12:01 p.m. December 11 through 11:59 p.m. December 14, 2008, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. December 12 through 11:59 p.m. December 14, 2008, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 15, 2008:

WAC 220-56-36000Q	Razor clams—Areas and seasons.
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**WSR 09-01-061**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-306—Filed December 11, 2008, 11:45 a.m., effective December 13, 2008]

Effective Date of Rule: December 13, 2008.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within

Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. Prohibition of all diving from licensed sea urchin harvest vessels prior to scheduled sea urchin openings discourages fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 11, 2008.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-52-07300A Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective December 13, 2008 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday and Tuesday of each week. The maximum daily landing of green sea urchins allowed in Sea Urchin Districts 1 and 2 is 1,000 pounds per valid designated sea urchin harvest vessel. Sea Urchin Districts 3, 4, 6 and 7 are open only on Monday through Thursday of each week.

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week. Sea Urchin District 4 is only open on Monday through Thursday of each week.

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

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective December 13, 2008:

WAC 220-42-07300Z Sea urchins. (08-303)

#### **WSR 09-01-069 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 08-307—Filed December 12, 2008, 1:07 p.m., effective December 15, 2008]

Effective Date of Rule: December 15, 2008.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The Voight's Creek Hatchery has been unable to secure sufficient eggs from returning hatchery winter steelhead to meet basin production goals. Closure of the fishery is needed to collect sufficient fish to meet egg take needs. Washington department of fish and wildlife, in support of the Hatchery Scientific Review Group recommendations, intends to use locally adapted broodstock to support the Puyallup River system winter steelhead hatchery program rather than importing eggs from outside sources. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 12, 2008.

Phil Anderson  
Acting Director

#### NEW SECTION

**WAC 232-28-61900U Exceptions to statewide rules—Carbon River (Pierce Co.)** Notwithstanding the pro-

visions of WAC 232-28-619, effective December 15, 2008, until further notice, it is unlawful to fish in waters of the Carbon River from the mouth to the Highway 162 Bridge.

**WSR 09-01-093**  
**EMERGENCY RULES**  
**DEPARTMENT OF LICENSING**

[Filed December 16, 2008, 11:51 a.m., effective December 16, 2008]

Effective Date of Rule: Immediately.

Purpose: To align rule with national standards and new system requirements: Changing the time file time assigned to records delivered by postal service, describing acceptable means of communication, and clarifying the only means to indicate that a debtor is a transmitting utility.

Citation of Existing Rules Affected by this Order: Amending WAC 308-390-102.

Statutory Authority for Adoption: RCW 62A.9A-526.

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 UCC information management system is being changed to create file time consistency for all delivery modes. It is necessary to have this rule in place when the system change goes into effect on December 16, 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 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 0, Repealed 0.

Date Adopted: December 16, 2008.

Nancy Skewis  
Administrator

AMENDATORY SECTION (Amending WSR 04-15-100, filed 7/19/04, effective 8/19/04)

**WAC 308-390-102 Means to deliver UCC records ((delivery)) and time of filing.** UCC ((documents)) records may be tendered for filing at the filing office as follows:

(1) Personal and courier delivery, at the filing office's street address between ~~((8:30))~~ 8:00 a.m. and ~~((4:30))~~ 5:00 p.m., Monday through Friday except state holidays. The file time for a UCC ((document)) record delivered by this method

is when the UCC ((document)) record is ((received)) first examined by ((the)) a filing ((office-)) officer for processing, even though the UCC ((document)) record may not yet have been accepted for filing and subsequently may be rejected((s)).

~~(2) ((Express mail delivery, at the filing office's street address during regular business hours. The file time for a UCC document delivered by this method is 5:00 p.m. on the day of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of 5:00 p.m. on the next day the filing office is open for business.~~

~~(3)) Postal service delivery, to the filing office's mailing address. The file time for a UCC ((document)) record delivered by this method is ((5:00 p.m. on the day of delivery-)) when the UCC record is first examined by a filing officer for processing, even though the UCC ((document)) record may not yet have been accepted for filing and subsequently may be ((subsequently)) rejected((s)). ((A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of 5:00 p.m. on the next day the filing office is open for business.~~

~~(4)) (3) Electronic mail and telefacsimile delivery((, to the filing office's e-mail address or the filing office's fax filing telephone number,)) are not accepted.~~

~~((5)) (4) Electronic filing. ((Financing statements)) UCC records may be ((entered on-line after July 1, 2001, as described in WAC 308-390-313 and 308-390-315)) transmitted electronically using the XML Format prescribed by the filing office. The time of filing of a ((financing statement delivered by direct on-line access or by web page data entry)) UCC record delivered by this method is the time ((that)) the filing office's information management system ((analyzes the relevant transmission,)) determines that all the required elements of the transmission have been received in ((a)) the required format((, and acknowledges acceptance to that system)).~~

(5) Direct web page data entry. UCC records may be delivered by on-line data entry using the filing office's web site on the internet. The file time for a UCC record delivered by this method is the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

(6) Means of communication. Regardless of the method of delivery, information in UCC records communicated to the filing office must be machine-readable and only in the form of characters included in the American National Standards Institute (ANSI) character set 0-255. Handwriting is not an acceptable means of completing any UCC form.

(7) Transmitting utility. The only means to indicate to the filing office that an initial financing statement is being filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of lapse date, is to check the appropriate box on a UCC1 Addendum filed with the initial financing statement or by transmitting the information in the proper field in an electronic filing of the initial financing statement.

**WSR 09-01-096**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-308—Filed December 16, 2008, 1:16 p.m., effective January 4, 2009]

Effective Date of Rule: January 4, 2009.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This closure complies with state/treaty management agreements for harvest allocation. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 16, 2008.

Phil Anderson  
 Acting Director

NEW SECTION

**WAC 220-52-04600A Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046, effective 7:00 p.m. January 4, 2009, until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Crab Management Region 1 (Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B).

**WSR 09-01-099**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)  
 (Mental Health Division)

[Filed December 17, 2008, 10:51 a.m., effective December 18, 2008]

Effective Date of Rule: December 18, 2008.

Purpose: The mental health division (MHD) is codifying its policy on how it administers community mental health services in the event of a nonparticipating regional support network.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 388-865-0105, 388-865-0410, 388-865-0484, 388-865-0511, and 388-865-0526.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, 71.34.380, and 74.08.090.

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 Pierce County Regional Support Network (RSN) no longer administers medicaid and other department-funded mental health services as of January 1, 2008. This required MHD to assume the duties of the RSN in order to continue to provide access for Pierce County consumers to mental health services. This rule-making action continues the emergency rule that is currently in effect under WSR 08-17-105 while MHD completes the permanent rule-making process. The adoption order for the permanent rule will soon be submitted for filing with the code reviser and should be effective in January 2009.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, 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 5, Repealed 0.

Date Adopted: December 10, 2008.

Stephanie E. Schiller  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0105 What the mental health division does and how it is organized.** (1) The department of social and health services is designated by the legislature as the state

mental health authority, and has designated the mental health division to administer the state mental health program.

(2) Local services are administered by regional support networks or by the mental health division.

(3) Telephone numbers for the mental health division or regional support networks are located in the local telephone directory and can also be obtained by calling the mental health division at the telephone number in subsection (4) of this section.

(4) To request an organizational chart, contact the mental health division at 1-888-713-6010 or (360) 902-8070, or write to the Mental Health Division Director, P.O. Box 45320, Olympia, WA 98504.

~~((3) Local services are administered by regional support networks (RSN), whose telephone number is located in the local telephone directory and can also be obtained by calling the mental health division at the above telephone number.))~~

#### NEW SECTION

**WAC 388-865-0106 When local services are administered by the mental health division.** (1) The mental health division administers local services if:

(a) A regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045; or

(b) The DSHS secretary assumes the duties assigned to a nonparticipating regional support network under RCW 71.24.035(16).

(2) Consumers residing within the boundaries of a nonparticipating regional support network who are eligible for the Title XIX medicaid program are entitled to receive medically necessary services without charge to the consumer;

(3) Within available resources as defined in RCW 71.24.025(2), consumers residing within the boundaries of a nonparticipating regional support network may receive services from any provider of community support services that is contracted with the department under the provisions of chapter 388-502 WAC and licensed by or certified by the mental health division;

(4) When the DSHS secretary assumes the duties assigned to a nonparticipating regional support network, the following standards and services continue to apply:

(a) WAC 388-865-0217, psychiatric indigent inpatient program;

(b) WAC 388-865-0222, advisory board;

(c) WAC 388-865-0225, resource management;

(d) WAC 388-865-0229, inpatient services;

(e) WAC 388-865-0230, community support services;

(f) WAC 388-865-0235, residential and housing services;

(g) WAC 388-865-0240, consumer employment services;

(h) WAC 388-865-0245, administration of ITA;

(i) WAC 388-865-0250, ombuds services;

(j) WAC 388-865-0255, consumer grievance process; and

(k) WAC 388-865-0284, standards for contractors and subcontractors.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0410 Consumer rights.** (1) The provider must document that consumers, prospective consumers, or legally responsible others are informed of consumer rights at admission to community support services in a manner that is understandable to the individual. Consumer rights must be written in alternative format for consumers who are blind or deaf, and must also be translated to the most commonly used languages in the service area consistent with WAC 388-865-0260(3);

(2) The provider must post a written statement of consumer rights in public areas, with a copy available to consumers on request. Providers of telephone only services (e.g., crisis lines) must post the statement of consumer rights in a location visible to staff and volunteers during working hours;

(3) The provider must develop a statement of consumer rights that incorporates the following statement or a variation approved by the mental health division: "You have the right to:

(a) Be treated with respect, dignity and privacy;

(b) Develop a plan of care and services which meets your unique needs;

(c) The services of a certified language or sign language interpreter and written materials and alternate format to accommodate disability consistent with Title VI of the Civil Rights Act;

(d) Refuse any proposed treatment, consistent with the requirements in chapters 71.05 and 71.34 RCW;

(e) Receive care which does not discriminate against you, and is sensitive to your gender, race, national origin, language, age, disability, and sexual orientation;

(f) Be free of any sexual exploitation or harassment;

(g) Review your clinical record and be given an opportunity to make amendments or corrections;

(h) Receive an explanation of all medications prescribed, including expected effect and possible side effects;

(i) Confidentiality, as described in chapters 70.02, 71.05, and 71.34 RCW and regulations;

(j) All research concerning consumers whose cost of care is publicly funded must be done in accordance with all applicable laws, including DSHS rules on the protection of human research subjects as specified in chapter 388-04 WAC;

(k) Make an advance directive, stating your choices and preferences regarding your physical and mental health treatment if you are unable to make informed decisions;

(l) Appeal any denial, termination, suspension, or reduction of services and to continue to receive services at least until your appeal is heard by a fair hearing judge;

(m) If you are medicaid eligible, receive all services which are medically necessary to meet your care needs. In the event that there is a disagreement, you have the right to a second opinion from;

(i) A provider within the regional support network about what services are medically necessary; or

(ii) For consumers not enrolled in a prepaid health plan, a provider under contract with the mental health division.

(n) Lodge a complaint with the ombuds, regional support network, or provider if you believe your rights have been violated. If you lodge a complaint or grievance, you must be free



of any act of retaliation. The ombuds may, at your request, assist you in filing a grievance. The ombuds' phone number is: \_\_\_\_\_.

(o) Ask for an administrative hearing if you believe that any rule in this chapter was incorrectly applied in your case."

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0484 Process to certify providers of involuntary services.** In order to be certified to provide services to consumers on an involuntary basis, the provider must comply with the following process:

(1) Be licensed as a community support provider consistent with this section or licensed as a community hospital by the department of health;

(2) Complete and submit an application for certification to the regional support network or the mental health division if the DSHS secretary has assumed the duties assigned to the nonparticipating regional support network;

(3) The regional support network selects providers for certification and makes a request to the mental health division for certification;

(4) The mental health division conducts an on-site review to examine agency policies and procedures, personnel records, clinical records, financial documents, and any other information that may be necessary to confirm compliance with minimum standards of this section;

(5) The mental health division grants certification based on compliance with the minimum standards of this section and chapter 71.05 RCW;

(6) The certificate may be renewed annually ~~((at the request of))~~ if:

(a) Requested by the regional support network or those providers contracted with the mental health division directly; and

(b) The provider(~~'s continued compliance~~) continues to comply with the minimum standards of this section;

(7) The procedures to suspend or revoke a certificate are the same as outlined in WAC 388-865-0468;

(8) The appeal process to contest a decision of the mental health decision is the same as outlined in WAC 388-865-0482.

AMENDATORY SECTION (Amending WSR 04-07-014, filed 3/4/04, effective 4/4/04)

**WAC 388-865-0511 Evaluation and treatment facility certification.** To obtain and maintain certification to provide inpatient evaluation and treatment services under chapter 71.05 and 71.34 RCW, a facility must meet the following requirements:

(1) Be licensed by the department of health as:

(a) A hospital as defined in chapter 70.41 RCW;

(b) A psychiatric hospital as defined in chapter 246-322 WAC;

(c) A mental health inpatient evaluation and treatment facility consistent with chapter 246-337 WAC; or

(d) A mental health child long-term inpatient treatment facility consistent with chapter 246-337 WAC.

(2) Be approved by the regional support network, or the mental health division ~~((in the case of mental health))~~. Child long-term inpatient treatment facilities(~~(-and)) can only be approved by the mental health division.~~

(3) Successfully complete a provisional and annual on-site review by the mental health division to determine facility compliance with the minimum standards of this section and chapters 71.05 and 71.34 RCW.

AMENDATORY SECTION (Amending WSR 04-07-014, filed 3/4/04, effective 4/4/04)

**WAC 388-865-0526 Single bed certification.** At the discretion of the mental health division, an exception may be granted to allow treatment to an adult on a seventy-two hour detention or fourteen-day commitment in a facility that is not certified under WAC 388-865-0500; or for a maximum of thirty days to allow a community facility to provide treatment to an adult on a ninety- or one hundred eighty-day inpatient involuntary commitment order. For involuntarily detained or committed children, the exception may be granted to allow treatment in a facility not certified under WAC 388-865-0500 until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The regional support network or its designee must submit a written request for a single bed certification to the mental health division prior to the commencement of the order. In the case of a child, the facility must submit the written request directly to the mental health division. If the DSHS secretary has assumed the duties assigned to a nonparticipating regional support network, a single bed certification may be requested by a mental health division designee contracted to provide inpatient authorization or designated crisis response services.

(2) The facility receiving the single bed certification must meet all requirements of this section unless specifically waived by the mental health division.

(3) The request for single bed certification must describe why the consumer meets at least one of the following criteria:

(a) The consumer requires services that are not available at a facility certified under this chapter or a state psychiatric hospital; or

(b) The consumer is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the consumer's individual treatment needs.

(4) The mental health division director or the director's designee makes the decision and gives written notification to the requesting ~~((regional support network))~~ entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal law or state statute.

(5) The mental health division may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the mental health division determines that the violation places consumers in imminent jeopardy, immediate revocation of this exception can occur.

(6) Neither consumers nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding single bed certification decisions by mental health division staff.

**WSR 09-01-128**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-309—Filed December 19, 2008, 3:14 p.m., effective December 19, 2008, 3:14 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

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

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

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

Date Adopted: December 19, 2008.

Phil Anderson  
Acting Director

NEW SECTION

**WAC 220-52-07300B Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1 and 2 are open only on December 21, 22, 23, and 26, 2008. The maximum daily landing of green sea urchins allowed in Sea Urchin Districts 1 and 2 is 1,000 pounds per valid designated sea urchin harvest vessel. Sea Urchin Districts 3, 4, 6 and 7 are open only on Monday through Thursday of each week.

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week. Sea Urchin District 4 is only open on Monday through Thursday of each week.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective December 19, 2008:

WAC 220-52-07300A      Sea urchins. (08-306)

**WSR 09-01-147**  
**EMERGENCY RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-28—Filed December 22, 2008, 12:36 p.m., effective December 22, 2008, 12:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend the audited financial statement regulations to: (1) Prohibit the commissioner from recognizing a person or firm as a qualified independent certified public accountant if the person or firm has entered into an indemnification agreement with respect to the audit and (2) permit the agreement between an insurer and its qualified independent certified accountant to include an arbitration and/or mediation provision.

Citation of Existing Rules Affected by this Order: Amending WAC 284-07-110 and 284-07-150.

Statutory Authority for Adoption: RCW 48.02.060, 48.05.250, 48.44.050, 48.44.095, 48.46.080, 48.46.200, 48.125.090.

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: Insurers must file audited financial statements for each calendar year with the commissioner by June of the following year. Effective December 31, 2008, an NAIC accreditation standard related to the audited financial statements filed with the commissioner becomes effective. The new standard applies to CY 2008 statements filed by June, 2009. The standard prohibits the engagement agreements between an individual or firm and an insurer from requiring the insurer to indemnify the individual or firm in relation to the audit. If an engagement agreement contains an indemnification provision as described, the commissioner is prohibited from recognizing the individual or firm preparing the audited financial statement as a qualified independent certified public accountant. To retain its NAIC accreditation the office of the insurance commissioner must have these regulations in place; the regulated entities must be aware of the requirement immediately to ensure their engagement agreements qualify the certified public accountants as independent. In addition, the emergency rule permits these engagement agreements to provide for mediation or arbitration as a dispute resolution tool.

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 2, Repealed 0.

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

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

Date Adopted: December 22, 2008.

Mike Kreidler  
Insurance Commissioner

**AMENDATORY SECTION** (Amending Matter No. R 2002-07, filed 10/23/02, effective 11/23/02)

**WAC 284-07-110 Definitions.** For the purposes of this regulation the following definitions shall apply:

(1) "Audited financial report" means and includes those items specified in WAC 284-07-130.

(2) "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for Canadian and British companies, the terms mean a "Canadian-chartered or British-chartered accountant."

(3) "Indemnification" means an agreement of indemnity or a release of liability where the intent or effect is to shift or

limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(4) "Insurer" has the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW, health maintenance organizations registered under chapter 48.46 RCW, and fraternal benefit societies registered under chapter 48.36A RCW.

~~((4))~~ (5) "NAIC" means National Association of Insurance Commissioners.

~~((5))~~ (6) "Policy holder" shall also mean subscriber.

**AMENDATORY SECTION** (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

**WAC 284-07-150 Qualifications of independent certified public accountant.** (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant ~~((that))~~ if the person or firm:

(a) Is not in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as an indemnification) with respect to the audit of the insurer.

(2) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the code of professional conduct of the state of Washington board of public accountancy, or similar applicable code.

(3) A qualified independent certified public accountant may enter into any agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under chapters 48.31 and 48.99 RCW, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:

(a) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

(b) Premium volume of the insurer; and

(c) Number of jurisdictions in which the insurer transacts business.

The requirements of this subsection shall become effective two years after the enactment of this regulation.

~~((4))~~ (5) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.

~~((5))~~ (6) The commissioner as provided in RCW 48.02.060 may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.

**WSR 09-01-148**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed December 22, 2008, 12:36 p.m., effective December 24, 2008]

Effective Date of Rule: December 24, 2008.

Purpose: The department is amending via an emergency rule WAC 388-450-0015 and 388-470-0045 to exclude economic stimulus payments, authorized by HR 5140, as income in the month of receipt and to exclude the payments as a resource for an additional two months. This change is necessary in order to apply the federal policy to general assistance program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015 and 388-470-0046.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: HR 5140.

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 rule change is necessary to allow the department to apply the federal policy regarding the economic stimulus rebates equally to all programs. Federal economic stimulus payments were sent out beginning in May, 2008. The department filed an emergency rule on April 30, 2008, as WSR 08-10-040. A CR-101 was also filed on

April 21, 2008, as WSR 08-09-112. A CR-102 was filed on December 1, 2008, as WSR 08-24-082. The public hearing is scheduled for January 6, 2009.

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

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

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

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

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

Date Adopted: December 19, 2008.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

**WAC 388-450-0015 What types of income does the department not use to figure out my benefits?** This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments authorized under legislative action of the House of Representatives bill H.R. 5140;

~~(d)~~ (d) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

~~((4))~~ (e) Energy assistance payments;

~~((6))~~ (f) Educational assistance we do not count under WAC 388-450-0035;

~~((7))~~ (g) Native American benefits and payments we do not count under WAC 388-450-0040;

~~((8))~~ (h) Income from employment and training programs we do not count under WAC 388-450-0045;

~~((9))~~ (i) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

~~((10))~~ (j) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

~~((11))~~ (k) One-time payments issued under the Department of State or Department of Justice Reception and

Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

~~((4))~~ (l) Payments we are directly told to exclude as income under state or federal law.

~~((4))~~ (m) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

~~((4))~~ (n) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

**WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs?** (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits, less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts; or
- (vii) Lump sum payments as described in chapter 388-455 WAC.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

- (i) A household good;
- (ii) Needed for self-employment; or
- (iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

- (a) Bona fide loans, including student loans;
- (b) Basic Food benefits;
- (c) Income tax refunds in the month of receipt;
- (d) Earned income tax credit (EITC) in the month received and the following month;
- (e) Advance earned income tax credit payments;
- (f) Federal economic stimulus payments authorized under legislative action of the House of Representatives bill H.R. 5140 in the month received and the following two months:

(g) Individual development accounts (IDAS) established under RCW 74.08A.220;

~~((g))~~ (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

~~((4))~~ (i) Underpayments received under chapter 388-410 WAC;

~~((4))~~ (j) Educational benefits that are excluded as income under WAC 388-450-0035;

~~((4))~~ (k) The income and resources of an SSI recipient;

~~((4))~~ (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

~~((4))~~ (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

~~((4))~~ (n) Adoption support payments;

~~((4))~~ (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((4))~~ (p) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

- (i) You are making a good faith effort to sell;
- (ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

### WSR 09-01-152

#### EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 22, 2008, 1:54 p.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: Health and recovery services administration (HRSA) is creating new WAC 388-505-0230 Family-related institutional medical, to codify institutional medical eligibility for clients who are categorically related to the temporary assistance for needy families (TANF) program. This rule-making action will bring the state into compliance with federal regulations. This rule will also clarify program rules for children admitted to medical facilities and psychiatric inpatient treatment.

Statutory Authority for Adoption: RCW 74.04.055, 74.04.057, 74.08.090, and 74.09.530.

Other Authority: 42 C.F.R. 441.151.

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

Reasons for this Finding: This rule will bring the state into compliance with federal regulations while the permanent rule-making process, initiated under WSR 07-12-031, is completed. This continues the emergency rule that is currently in effect under WSR 08-18-076 while the department completes the permanent rule-making process. Since the filing of WSR 08-18-076, HRSA completed the external review and plain talk review of the permanent rule-making process, and filed a CR-102 as WSR 09-01-144 with a public hearing date of February 10, 2008 [2009].

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

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

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

Date Adopted: December 11, 2008.

Stephanie E. Schiller  
Rules Coordinator

#### NEW SECTION

**WAC 388-505-0230 Family related institutional medical.** This section describes how the department determines eligibility for institutional medical benefits for temporary assistance for needy families (TANF)-related clients and children under the age of twenty-one who reside in a medical institution or a psychiatric or chemical dependency facility.

(1) An individual over the age of twenty-one is eligible for categorically needy (CN) family-related institutional medical assistance when the individual:

(a) Meets U.S. citizenship or immigrant status as described in WAC 388-424-0010 (1) or (2);

(b) Meets the state residency requirement as described in chapter 388-468 WAC;

(c) Provides a valid social security number as described in chapter 388-476 WAC;

(d) Meets TANF eligibility requirements as described in WAC 388-400-0005, except for the requirement to participate in the Workfirst program under chapter 388-310 WAC;

(e) Has countable income below the applicable TANF payment standard based upon household size to include the institutionalized individual;

(f) Meets institutional status as described in WAC 388-513-1320 and resides in a medical institution, intermediate care facility for mentally retarded (ICF/MR), hospice care center, state veteran's facility, or nursing home; and

(g) Participates available income towards the cost of care as described in WAC 388-513-1380.

(2) An individual over the age of twenty-one is not eligible for family-related institutional medical assistance when the individual resides in a psychiatric facility, unless the individual is:

(a) A Medicaid recipient or has submitted an application for medical benefits prior to the individual's twenty-first birthday; and

(b) Receiving active psychiatric treatment and the treatment extends beyond the twenty-first birth date but the individual has not yet reached the age of twenty-two. (Eligibility in this circumstance terminates when the individual discharges from the facility or on the individual's twenty-second birthday, whichever happens first.)

(3) An individual over the age of twenty-one with income in excess of the TANF payment standard is not eligi-

ble for medically needy (MN) family-related institutional medical assistance.

(4) An individual aged nineteen through twenty-one is eligible for CN medical assistance under the family-related institutional medical program when the individual:

(a) Meets the requirements in subsection (1)(a), (b), and (c);

(b) Resides in a medical facility as described in subsection (1)(f), a psychiatric facility (IMD) or a chemical dependency facility;

(c) Has countable income below the one-person TANF standard; and

(d) Participates toward the cost of their care as described in WAC 388-513-1380.

(5) An individual aged eighteen through twenty-one with countable income below the payment standard described in WAC 388-478-0040 may be eligible for general assistance cash assistance for the individual's personal needs allowance.

(6) An individual under the age of nineteen is eligible for CN medical assistance under the family-related institutional medical program when the individual:

(a) Meets the requirements in subsection (1)(a), (b), and (c);

(b) Resides in a medical facility as described in subsection (1)(f), a psychiatric facility (IMD) or a chemical dependency facility;

(c) Has countable income below the applicable standard described in WAC 388-505-0210; and

(d) Participates toward the cost of their care as described in WAC 388-513-1380.

(7) When an individual under the age of twenty-one resides or is expected to reside thirty days or longer in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center or nursing facility, only the parental income the parent chooses to contribute is considered available.

(8) When an individual resides in a psychiatric facility or chemical dependency facility, parental income is considered as follows:

(a) It is available to an individual seventeen years of age or younger unless:

(i) The individual is expected to reside outside of the home for ninety days or longer; or

(ii) The individual is in court-ordered, out-of-home care in accordance with chapter 13.34 RCW; or

(iii) The department determines the parents are not exercising responsibility for the care and control of the individual.

(b) Parental income is considered available only as contributed to an individual over seventeen years of age but under nineteen who resides or is expected to reside in a psychiatric facility for thirty days or longer; and

(c) Parental income is not considered available to an individual between nineteen and twenty-one years of age who resides or is expected to reside in a psychiatric facility or chemical dependency facility for thirty days or longer.

(9) An individual under the age of twenty-one is considered for medically needy (MN) family-related institutional medical when the individual's countable income exceeds the standards in WAC 388-505-0210.

(10) A TANF-related individual who is not expected to reside in a medical facility for thirty days or longer is not eligible for family-related institutional medical. The individual's eligibility will be considered for a non-institutional medical program as described in WAC 388-505-0210, 388-505-0211, or 388-505-0220.

### WSR 09-01-188

#### EMERGENCY RULES

#### DEPARTMENT OF HEALTH

[Filed December 24, 2008, 10:01 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: WAC 246-16-800 through 246-16-890, sanction schedule. These new rules adopt a sanction schedule for disciplinary action in all credentialed health care professions as required by section 12 of 4SHB 1103 (2008), now codified at RCW 18.130.390.

Statutory Authority for Adoption: RCW 18.130.390.

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: In the 2008 legislative session, section 12 of 4SHB 1103 (208) [(2008)], codified as RCW 18.130.390, requires that the department adopt emergency rules effective January 1, 2009.

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 8, 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 8, Amended 0, Repealed 0.

Date Adopted: December 24, 2008.

B. White  
for Mary C. Selecky  
Secretary

### SANCTIONS

#### NEW SECTION

**WAC 246-16-800 Sanctions—General provisions. (1)** Applying these rules.

(a) The disciplining authorities listed in RCW 18.130-040(2) will apply these rules to determine sanctions imposed for professional misconduct by a license holder in active or expired status. The rules do not apply to applicants.

(b) The disciplining authorities will apply the rules in:  
 (i) Orders under RCW 18.130.110 or 18.130.160; and  
 (ii) Stipulations to informal disposition under RCW 18.130.172.

(c) Sanctions will begin on the effective date of the order.

(2) Selecting sanctions.

(a) The disciplining authority will select sanctions to protect the public and, if possible, rehabilitate the license holder.

(b) The disciplining authority may impose the full range of sanctions listed in RCW 18.130.160 for orders and RCW 18.130.172 for stipulations to informal dispositions.

(i) Suspension or revocation will be imposed when the license holder cannot practice with reasonable skill or safety.

(ii) Permanent revocation may be imposed when the disciplining authority finds the license holder can never be rehabilitated or can never regain ability to practice safely.

(iii) Surrender of credential may be imposed when the license holder is at the end of his/her effective practice and surrender alone is enough to protect the public. The license holder must agree to retire and not resume practice.

(iv) Indefinite suspension may be imposed in default and waiver of hearing orders.

(c) The disciplining authority may deviate from the sanction schedules in these rules if the schedule does not adequately address the facts in a case. The disciplining authority will acknowledge the deviation and state its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition.

(d) If the sanction schedules in these rules do not address the misconduct, the disciplining authority will use its judgment to determine appropriate sanctions.

(3) Using sanction schedules.

(a) Step 1: The findings of fact in an order or the allegations in an informal disposition describe the misconduct. The disciplining authority uses the misconduct described to select the appropriate sanction schedule contained in WAC 246-16-810 through 246-16-860.

(i) If the act of misconduct falls in more than one sanction schedule, the greater sanction is imposed.

(ii) If different acts of misconduct fall in the same sanction schedule, the highest sanction is imposed and the other acts of misconduct are considered aggravating factors.

(b) Step 2: The disciplining authority identifies the severity of the misconduct and identifies a tier using the sanction schedule tier descriptions.

(c) Step 3: The disciplining authority identifies aggravating or mitigating factors using the list in WAC 246-16-890. The disciplining authority describes the factors in the order or stipulation to informal disposition.

(d) Step 4: The disciplining authority selects sanctions within the identified tier.

(i) Aggravating factors move the appropriate sanctions towards the maximum end of the tier.

(ii) Mitigating factors move the appropriate sanctions towards the minimum end of the tier.


(iii) Mitigating or aggravating factors may result in determination of a sanction outside the range in the tier. The disciplining authority will state its reasons for deviating from

the sanction schedules in the order or stipulation to informal disposition. The disciplining authority has complied with these rules if it acknowledges the deviation and states its reasons for deviating from the sanction schedules in the order or stipulation to informal disposition.




NEW SECTION

**WAC 246-16-810 Sanction schedule—Practice below standard of care.**

<b>PRACTICE BELOW STANDARD OF CARE</b>				
<b>Severity</b>	<b>Tier / Conduct</b>	<b>Sanction Range In consideration of Aggravating &amp; Mitigating Circumstances</b>		<b>Duration</b>
		<b>Minimum</b>	<b>Maximum</b>	
least    greatest	<b>A</b> – Caused no or minimal patient harm or a low risk of minimal patient harm	Conditions that may include reprimand, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	<b>B</b> – Caused patient harm or risk of severe patient harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	<b>C</b> – Caused severe harm or death to a human patient	Oversight for 3 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. In addition - demonstration of knowledge or competency.	Permanent conditions, restrictions or revocation.	3 years - permanent


NEW SECTION

**WAC 246-16-820 Sanction schedule—Sexual misconduct or contact.**

<b>SEXUAL MISCONDUCT OR CONTACT (including convictions for sexual misconduct)</b>				
<b>Severity</b>	<b>Tier / Conduct</b>	<b>Sanction Range In consideration of Aggravating &amp; Mitigating Circumstances</b>		<b>Duration</b>
		Minimum	Maximum	
least    greatest	<b>A</b> –Inappropriate conduct, contact, or statements of a sexual or romantic nature	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	<b>B</b> – Sexual contact, romantic relationship, or sexual statements that risk or result in patient harm	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	<b>C</b> – Sexual contact, including but not limited to contact involving force and/or intimidation.	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions, or revocation.	6 years - permanent

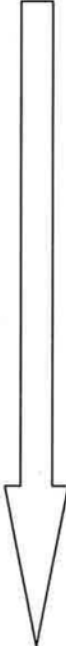
NEW SECTION

**WAC 246-16-830 Sanction schedule—Abuse—Physical and emotional.**

<b>ABUSE -- Physical and/or Emotional</b>				
<b>Severity</b>	<b>Tier / Conduct</b>	<b>Sanction Range In consideration of Aggravating &amp; Mitigating Circumstances</b>		<b>Duration</b>
		Minimum	Maximum	
least    greatest	<b>A</b> – Verbal or nonverbal intimidating, forceful contact, or disruptive or demeaning behavior, including general behavior, not necessarily directed to a specific patient or patients	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	<b>B</b> – Moderately abusive unnecessary or forceful contact or disruptive or demeaning behavior, including general behavior not directed at a specific patient or patients causing mental or physical injury	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	<b>C</b> – Severe physical, verbal, or forceful contact; or emotional disruptive behavior; that results in significant harm or death	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions, or revocation.	6 years - permanent

NEW SECTION


**WAC 246-16-840 Sanction schedule—Diversion of controlled substances or legend drugs.**

<b>DIVERSION OF CONTROLLED SUBSTANCES OR LEGEND DRUGS</b>				
<b>Severity</b>	<b>Tier/Conduct</b>	<b>Sanction Range In consideration of Aggravating &amp; Mitigating Circumstances</b>		<b>Duration</b>
		<b>Minimum</b>	<b>Maximum</b>	
least    greatest	<b>A</b> – Diversion with no or minimal patient harm or risk of harm	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 5 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-5 years
	<b>B</b> – Diversion with moderate patient harm or risk of harm or for distribution	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 7 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 - 7 years unless revocation
	<b>C</b> – Diversion with severe physical injury or death of a patient or a risk of severe physical injury or death or for substantial distribution to others	1 year suspension AND oversight for 5 additional years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. AND demonstration of successful completion of evaluation and treatment.	Permanent conditions, restrictions OR revocation.	6 years - permanent



NEW SECTION

**WAC 246-16-860 Sanction schedule—Criminal convictions.**

<b>CRIMINAL CONVICTIONS (excluding sexual misconduct)</b>				
<b>Severity</b>	<b>Tier / Conviction</b>	<b>Sanction Range In consideration of Aggravating &amp; Mitigating Circumstances</b>		<b>Duration</b>
		Minimum	Maximum	
least  greatest	<b>A</b> – Conviction of a Gross Misdemeanor except sexual offenses in RCW 9.94A.030	Conditions that may include reprimand, training, monitoring, probation, supervision, evaluation, etc.	Oversight for 5 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-5 years
	<b>B</b> – Conviction of a Class B, C, OR Unclassified Felony, except sexual offenses in RCW 9.94A.030	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	<b>C</b> – Conviction of a Class A Felony, except sexual offenses in RCW 9.94A.030	5 years suspension	Permanent revocation	5 years - permanent revocation

NEW SECTION

**WAC 246-16-890 Sanctions—Aggravating and mitigating factors.** The following nonexclusive list identifies factors that may mitigate or aggravate the sanctions that should be imposed in an order or stipulation to informal disposition.

- (1) Factors related to the misconduct:
  - (a) Gravity of the misconduct;
  - (b) Age, capacity and/or vulnerability of the patient, client or victim;
  - (c) Number or frequency of the acts of misconduct;
  - (d) Injury caused by the misconduct;
  - (e) Potential for injury to be caused by the misconduct;
  - (f) Degree of responsibility for the outcome;
  - (g) Abuse of trust;
  - (h) Intentional or inadvertent act(s);
  - (i) Motivation is criminal, immoral, dishonest or for personal gain;
  - (j) Length of time since the misconduct occurred.
- (2) Factors related to the license holder:
  - (a) Experience in practice;
  - (b) Past disciplinary record;
  - (c) Previous character;
  - (d) Mental and/or physical health;

- (e) Personal circumstances;
- (f) Personal problems having a nexus with the misconduct.
- (3) Factors related to the disciplinary process:
  - (a) Admission of key facts;
  - (b) Full and free disclosure to the disciplining authority;
  - (c) Voluntary restitution or other remedial action;
  - (d) Bad faith obstruction of the investigation or discipline process or proceedings;
  - (e) False evidence, statements or deceptive practices during the investigation or discipline process or proceedings;
  - (f) Remorse or awareness that the conduct was wrong;
  - (g) Impact on the patient, client, or victim.
- (4) General factors:
  - (a) License holder's knowledge, intent, and degree of responsibility;
  - (b) Presence or pattern of other violations;
  - (c) Present moral fitness of the license holder;
  - (d) Potential for successful rehabilitation;
  - (e) Present competence to practice;
  - (f) Dishonest or selfish motives;
  - (g) Illegal conduct;
  - (h) Heinousness of the misconduct;
  - (i) Ill repute upon the profession;
  - (j) Isolated incident unlikely to reoccur.

**WSR 09-01-191**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-310—Filed December 24, 2008, 10:08 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish 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 220-33-04000D; and amending WAC 220-33-040.

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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *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; 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 smelt fishery regulations are consistent with Level I fisheries in the "Washington and Oregon Eulachon Management Plan for the Columbia River." Abundance and productivity indicators project a weak return of smelt for 2009. Rule is consistent with Columbia River compact action of December 18, 2008. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National

Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such 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 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: December 24, 2008.

Phil Anderson  
Director

NEW SECTION

**WAC 220-33-04000D Smelt—Areas and seasons.** Notwithstanding the provisions of WAC 220-33-040, effective January 1, 2009, through March 31, 2009, the Columbia River and Washington tributaries are closed to fishing for smelt except under the following provisions:

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

**Dates:** Mondays and Thursdays, 7:00 a.m. to 2:00 p.m.

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

**Allowable sales:** Smelt.

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

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

**2) Area:** Cowlitz River downstream of Peterson's Eddy  
**Dates:** Sundays and Wednesdays, 6:00 p.m. to midnight  
**Gear:** Dipnets.

**Allowable sales:** Smelt.

**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 April 1, 2009:

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

**WSR 09-01-192**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-311—Filed December 24, 2008, 10:17 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: Amend sportfishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: A Level 1 fishery was adopted in accordance with the Washington and Oregon eulachon management plan. Abundance and productivity indicators project a weak return of smelt for 2009. Rule is consistent with Washington department of fish and wildlife hearing action of December 18, 2008. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 24, 2008.

Phil Anderson  
Acting Director

#### NEW SECTION

**WAC 220-56-27000C Smelt—Areas and seasons.**  
 Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-275, effective January 1, 2009 through March 31, 2009, it is unlawful to fish for or possess smelt in those waters of the Columbia River and tributaries except under the following provisions:

1) Area: Mainstem Columbia River below Bonneville Dam

Open Dates: 7 days/week

Hours: 24 hours per day

Daily limit: 25 pounds, possession limit 25 pounds

Gear: Dipnets

2) Area: Cowlitz River

Open Dates: Saturdays

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

Daily limit: 10 pounds, possession limit 10 pounds

Gear: Dipnets

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 1, 2009:

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

**WSR 09-01-194**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-312—Filed December 24, 2008, 10:37 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *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; 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: Sets the annual season for recreational white sturgeon fisheries above Wauna power lines in the mainstem Columbia River and specific tributaries. Applies the new statewide fork length size limit standard to the below Wauna area. Retention below the Wauna powerlines is allowed under permanent regulations beginning January 1, 2009. Rule is consistent with Washington department of fish and wildlife hearing action of December 18, 2008. There is insufficient time to adopt 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: December 24, 2008.

Phil Anderson  
Director

## NEW SECTION

**WAC 232-28-61900W Exceptions to statewide rules—Columbia River sturgeon.** (1) Notwithstanding the provisions of WAC 232-28-619, effective January 1, 2009 until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and tributaries from the Wauna powerlines upstream to Bonneville Dam, and all adjacent Washington tributaries, except a person may retain white sturgeon Thursdays, Fridays, and Saturdays.

(2) Notwithstanding the provisions of WAC 232-28-619, effective January 1, 2009 until further notice, the minimum size when open to retain white sturgeon is 38 inches fork length in those waters of the Columbia River and tributaries downstream of the Wauna powerline crossing at RM 40.

**WSR 09-01-196  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-313—Filed December 24, 2008, 11:02 a.m., effective January 6, 2009, 6:00 p.m.]

Effective Date of Rule: January 6, 2009, 6:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish 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 220-33-01000X; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 74.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *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; 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: Sets the winter season sturgeon fishery. Sturgeon sales limited to sturgeon 43-54 inches in fork length (as measured from nose to the fork in the tail). Season is consistent with Washington fish and wildlife commission guidance for 2006-2009 sturgeon fishery management. Landings are expected to stay within the harvest guideline of 1,700 fish for this season. Regulation is consistent with compact action of December 18, 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. *Shappy 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementa-

tion of such 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 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: December 24, 2008.

Phil Anderson  
Acting Director

#### NEW SECTION

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

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

SEASON:

6 PM Tuesday January 6 - 6 PM Wednesday January 7, 2009

6 PM Tuesday January 13 - 6 PM Wednesday January 14, 2009

6 PM Tuesday January 20 - 6 PM Wednesday January 21, 2009

6 PM Tuesday January 27 - 6 PM Wednesday January 28, 2009

6 PM Tuesday February 3 - 6 PM Wednesday February 4, 2009

6 PM Thursday February 5 - noon Friday February 6, 2009

6 PM Tuesday February 10 - 6 PM Wednesday February 11, 2009

6 PM Thursday February 12 - noon Friday February 13, 2009

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

ALLOWABLE SALE: Sturgeon (43-54 inch fork length) and adipose fin-clipped salmon. Green sturgeon retention prohibited.

SANCTUARIES: Sandy River.

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. February 13, 2009:

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