

WSR 09-03-088
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed January 20, 2009, 11:56 a.m., effective January 20, 2009, 11:56 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. The department has discovered a typographical error in the recently amended rule, which provides values to be used during the first half of 2009. The valuation for Ponderosa Pine Species Code PP Timber Quality Code 1 in Stumpage Value Area 5 should be \$134, not the \$135 amount reflected in the recently adopted rule. This amendment provides the correct \$134 value, which is the value discussed with stakeholders during the rule-making process.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Other Authority: RCW 84.33.091.

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 values used in this rule are used to determine tax liability for the period beginning January 1, 2009, and ending June 30, 2009. An emergency rule is needed to provide the correct valuation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 20, 2009.

Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-043, filed 12/31/08, effective 1/1/09)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from January 1 through June 30, 2009:

TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1
 January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$288	\$281	\$274	\$267	\$260
		2	288	281	274	264	260
		3	288	281	274	267	260
		4	238	231	224	217	210
Western Redcedar ⁽²⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽³⁾	WH	1	230	223	216	209	202
		2	230	223	216	209	202
		3	230	223	216	209	202
		4	230	223	216	209	202
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁴⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Alaska-Cedar.

(3) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

(4) Stumpage value per ton.

(5) Stumpage value per cord.

(6) Stumpage value per 8 lineal feet or portion thereof.

(7) Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir	DF	1	\$316	\$309
		2	316	309	302	295	288
		3	316	309	302	295	288
		4	252	245	238	231	224
Western Redcedar ⁽²⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽³⁾	WH	1	222	215	208	201	194
		2	222	215	208	201	194
		3	222	215	208	201	194
		4	222	215	208	201	194
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁴⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

**TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$364	\$357
		2	364	357	350	343	336
		3	364	357	350	343	336
		4	316	309	302	295	288
Western Redcedar ⁽³⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽⁴⁾	WH	1	241	234	227	220	213
		2	241	234	227	220	213
		3	241	234	227	220	213
		4	241	234	227	220	213
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Alaska-Cedar.
 (3) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
 (4) Stumpage value per ton.
 (5) Stumpage value per cord.
 (6) Stumpage value per 8 lineal feet or portion thereof.
 (7) Stumpage value per lineal foot.

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot.

**TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$365	\$358	\$351	\$344	\$337
		2	365	358	351	344	337
		3	365	358	351	344	337
		4	294	287	280	273	266
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽⁴⁾	WH	1	276	269	262	255	248
		2	276	269	262	255	248
		3	276	269	262	255	248
		4	276	269	262	255	248
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$296	\$289	\$282	\$275	\$268
		2	296	289	282	275	268
		3	296	289	282	275	268
		4	269	262	255	248	241
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	((135))	127	120	113	106
		2	134	81	74	67	60
Western Redcedar ⁽³⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽⁴⁾	WH	1	211	204	197	190	183
		2	211	204	197	190	183
		3	211	204	197	190	183
		4	211	204	197	190	183
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6
January 1 through June 30, 2009**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$187	\$180	\$173	\$166	\$159
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	780	773	766	759	752
True Firs and Spruce ⁽⁴⁾	WH	1	164	157	150	143	136
Western White Pine	WP	1	229	222	215	208	201
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	780	773	766	759	752
Small Logs ⁽⁵⁾	SML	1	25	24	23	22	21
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	((RCF)) RCS	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 2009**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$187	\$180	\$173	\$166	\$159
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	780	773	766	759	752
True Firs and Spruce ⁽⁴⁾	WH	1	164	157	150	143	136
Western White Pine	WP	1	229	222	215	208	201
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	780	773	766	759	752
Small Logs ⁽⁵⁾	SML	1	25	24	23	22	21
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	((RCF)) RCS	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
 (9) Stumpage value per lineal foot.

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
 (9) Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$351	\$344	\$337	\$330	\$323
		2	351	344	337	330	323
		3	351	344	337	330	323
		4	280	273	266	259	252
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	637	630	623	616	609
Western Hemlock ⁽⁴⁾	WH	1	262	255	248	241	234
		2	262	255	248	241	234
		3	262	255	248	241	234
		4	262	255	248	241	234
Red Alder	RA	1	519	512	505	498	491
		2	459	452	445	438	431
Black Cottonwood	BC	1	24	17	10	3	1
Other Hardwood	OH	1	146	139	132	125	118
Douglas-Fir Poles & Piles	DFL	1	678	671	664	657	650
Western Redcedar Poles	RCL	1	1366	1359	1352	1345	1338
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage

value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through June 30, 2009:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
January 1 through June 30, 2009

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	- \$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
January 1 through June 30, 2009**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	- \$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	- \$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	- \$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass.** Forest-derived biomass consists of tree limbs, tops, needles, leaves, and other woody debris that are residues from such activities as timber harvesting, forest thinning, fire suppression, or forest health. Forest-derived biomass does not include scalable timber products or firewood (defined in WAC 458-40-650). Forest-derived biomass has a \$0/ton stumpage value.

WSR 09-04-010
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 22, 2009, 1:23 p.m., effective January 27, 2009]

Effective Date of Rule: January 27, 2009.

Purpose: The department is amending via an emergency rule WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements and 388-444-0040 Work programs for ABAWDs in the food stamp employment and training program, to allow participants in the FS E&T program the option to volunteer to participate more than one hundred twenty hours per month.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0005 and 388-444-0040.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.903.

Other Authority: Food, Conservation and Energy Act of 2008.

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

Reasons for this Finding: The rule change is necessary to comply with changes in the Food, Conservation and Energy Act of 2008, which allows FS E&T participants the option to volunteer to participate beyond one hundred twenty hours per month, effective October 1, 2008. The department filed an emergency rule on September 29, 2008, as WSR 08-20-084. A CR-101 was filed on January 17, 2008, as WSR 08-03-095. A CR-102 was filed on November 19, 2008, as WSR 08-23-102. The public hearing was held December 23, 2008.

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

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

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

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

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

Date Adopted: January 20, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-125, filed 7/3/07, effective 8/3/07)

WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements. (1) To receive Basic Food some people must register for work and participate in the food stamp employment and training (FS E&T) program.

(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.

(3) If you are nonexempt from FS E&T requirements, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5) If you are nonexempt, you must:

(a) Report to us or your FS E&T service provider and participate as required;

(b) Provide information regarding your employment status and availability for work when we ask for it;

(c) Report to an employer when we refer you; and

(d) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.

(8) ~~((Your FS E&T activities including paid or unpaid work will not exceed one hundred twenty hours a month whether you are exempt or nonexempt))~~ Exempt or nonexempt FS E&T participants will not be required to participate more than one hundred and twenty hours per month, but

exempt or nonexempt FS E&T participants may volunteer to participate beyond one hundred and twenty hours.

AMENDATORY SECTION (Amending WSR 99-07-024, filed 3/10/99, effective 4/10/99)

WAC 388-444-0040 Work programs for ABAWDs in the food stamp employment and training program. Work programs are available to clients eighteen to fifty years of age who are able to work and have no dependents.

(1) The following are considered work programs:

(a) Workfare consists of:

(i) Thirty days of job search activities in the first month beginning with the first day of application, or sixteen hours of volunteer work with a public or private nonprofit agency; and

(ii) In subsequent months, sixteen hours per month of volunteer work with a public or private nonprofit agency allows the client to remain eligible for food stamps. Workfare is not enforced community service or for paying fines or debts due to legal problems.

(b) Work experience (WEX) is supervised, unpaid work for at least twenty hours a week. The work must be for a nonprofit agency or governmental or tribal entity. This work is to improve the work skills of the client.

(c) On-the-job training (OJT) is paid employment for at least twenty hours a week. It is job training provided by an employer at the employer's place of business and may include some classroom training time.

(2) The department may not **require you to participate more than ((thirty hours a week of Workfare and paid work combined)) one hundred and twenty hours per month in a work program, paid work, or a combination of activities.** ABAWDs may volunteer to participate in activities beyond one hundred and twenty hours per month.

(3) The department may pay for some of a client's actual expenses needed for the client to participate in work programs. Standards for paying expenses are set by the department.

Statutory Authority for Adoption: Chapters 74.08A and 74.12 RCW, RCW 74.04.050, 74.04.055, 74.04.057, 74.08.-090.

Other Authority: 45 C.F.R. 260 and 42 U.S.C. 601.

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 amendment needs to be made via an emergency rule filing because the final rule of the Deficit Reduction Act went into effect October 1, 2008. The department did not have time to go through the regular rule-making process prior to October 1, 2008. The department is concurrently working on the regular rule filing process. A CR-101 was filed on September 24, 2008, as WSR 08-20-050. The department is in the process of filing a CR-102.

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 4, 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 4, Repealed 0.

Date Adopted: January 20, 2009.

Stephanie E. Schiller
Rules Coordinator

WSR 09-04-011

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 22, 2009, 1:24 p.m., effective January 28, 2009]

Effective Date of Rule: January 28, 2009.

Purpose: The department is extending the current emergency rule of WAC 388-310-0500 WorkFirst—Individual responsibility plan, 388-310-0900 WorkFirst—Basic education, 388-310-1000 WorkFirst—Vocational education, and 388-310-1050 WorkFirst—Skills enhancement training.

These amendments will enable the department to invoke new options under the final Deficit Reduction Act (DRA) and to maximize the state's ability to meet the federal work participation rate.

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

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

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

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

(a) What your responsibilities are; and

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

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

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

Your individual responsibility plan includes the following:

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

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

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

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

(3) How is my individual responsibility plan developed?

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

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

Once your individual responsibility plan is completed:

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

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

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

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

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

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

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

(d) A family violence situation arose or worsened.

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

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

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

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

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

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

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

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

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

(i) You are participating the equivalent of twenty hours or more per week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities; or

(ii) You have limited-English proficiency and you lack language skills that are needed to qualify for entry level jobs.

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

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

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

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

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

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

(a) Public and private technical college or school;

(b) Community college;

(c) Tribal college; or

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

(2) Vocational education may include:

(a) Customized job skills training;

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

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

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

(3) What is customized job skills training?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand program; or

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1050 WorkFirst—Skills enhancement training. (1) What is skills enhancement training?

Skills enhancement training (formerly known as job skills training) is training or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Skills enhancement training may include:

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

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

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

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

(e) (~~Supervised~~) Approved homework and study activities.

(2) Who may provide skills enhancement training?

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

(a) Community based organizations;

(b) Businesses;

(c) Tribal governments; or

(d) Public and private community and technical colleges.

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

We may add skills enhancement training in your individual responsibility plan if you are participating the equivalent of twenty or more hours a week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities.

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

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

290 WAC for the working connections child care program rules.)

WSR 09-04-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-07—Filed January 23, 2009, 1:49 p.m., effective February 1, 2009]

Effective Date of Rule: February 1, 2009.

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: The North Fork Stillaguamish fishing closure was implemented to help increase the number of hatchery winter steelhead returning to the Whitehorse facility. Hatchery winter steelhead broodstock collection efforts at Whitehorse Hatchery will end on January 31, 2009, and the river will reopen to fishing the following day. 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: January 23, 2009.

Phil Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2009:

WAC 232-28-61900X Exceptions to statewide rules—North Fork Stillaguamish River. (08-314)

WSR 09-04-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-10—Filed January 23, 2009, 1:50 p.m., effective February 1, 2009]

Effective Date of Rule: February 1, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Hatchery winter steelhead broodstock collection will be completed on January 31, 2009. Hatchery steelhead not retained at the hatchery by this date 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 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: January 23, 2009.

Phil Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2009:

WAC 232-28-61900S Exceptions to statewide rules—North Fork Nooksack River. (08-301)

WSR 09-04-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-11—Filed January 30, 2009, 2:52 p.m., effective February 2, 2009, 6:00 a.m.]

Effective Date of Rule: February 2, 2009, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100J; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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 treaty Indian winter season. Allows sales of fish caught with platform and hook and line gear. Allows the Yakama Nation to conduct C&S fisheries in the area below Bonneville Dam consistent with the 2007 MOA between Washington and Yakama Nation. Sales and retention of fish in this area are described in subsection (6)(a) of this document. Changes the measurement standard for sturgeon to a fork length measurement, rather than a total length measurement, which is consistent with the regulations adopted for non-Indian fisheries. Fisheries are consistent with the 2008-2017 interim management agreement and the biological opinion. Rule is consistent with the 2007 MOA between Yakama Nation and Washington state. Rule is consistent with action of the Columbia River compact on January 29, 2009. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River 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 allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon Management Agreement*.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 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: January 30, 2009.

Phil Anderson
Director

NEW SECTION

WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, shad, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H; except that those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, or sturgeon under the following provisions:

1. Open Areas: SMCRA 1F:
 - a. Season: 6:00 a.m. Mondays through 6 p.m. Fridays, weekly, from February 2 through March 21, 2009.
 - b. Gear: No mesh restriction on gillnets. Hoop nets, dip bag nets, and rod and reel with hook and line.
 - c. Allowable sale: steelhead, walleye, shad, carp, walleye, bass, yellow perch and sturgeon. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools and between 38-54 inches in fork length in the Bonneville Pool may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Salmon may **not** be sold, but may be retained for ceremonial

and subsistence purposes. Fish landed during an open commercial period may be sold at any time. Sale of platform or hook-and-line-caught fish is allowed during open commercial seasons.

2. Open Areas: SMCRA 1G, 1H.

a. Season: 6:00 a.m. February 2 through 6:00 p.m. March 21, 2009.

b. Gear: No mesh restriction on gillnets. Hoop nets, dip bag nets, and rod and reel with hook and line.

c. Allowable sale: steelhead, walleye, shad, carp, walleye, bass, yellow perch and sturgeon. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools and between 38-54 inches in fork length in the Bonneville Pool may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Salmon may **not** be sold, but may be retained for ceremonial and subsistence purposes. Fish landed during an open commercial period may be sold at any time. Sale of platform or hook-and-line-caught fish is allowed during open commercial seasons.

3. Open Area: On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only), for enrolled Yakama Nation members. Consistent with the 2007 MOA between Washington and Yakama Nation.

a. Season: 6:00 a.m. February 2 through 6:00 p.m. March 21, 2009

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

c. Allowable Sales: Steelhead, walleye, carp, shad, catfish, bass and yellow perch. Chinook may not be sold, but may be retained for Ceremonial and Subsistence (C&S) purposes. **Sturgeon retention is prohibited**, and may not be sold nor retained for ceremonial & subsistence purposes. Fish landed during an open commercial period may be sold at any time. Sales may not occur on USACE property.

4. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

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

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

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

d. Umatilla River, are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 miles upstream from

the eastern shoreline to one mile downstream from the western shoreline.

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

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

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2009:

WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam.

WSR 09-04-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-12—Filed January 30, 2009, 2:54 p.m., effective February 3, 2009, 6:00 p.m.]

Effective Date of Rule: February 3, 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 220-33-02000A; and amending WAC 220-33-020.

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: Modifies the ongoing winter season sturgeon fishery. Includes a weekly landing limit for sturgeon in order for the season to continue while remaining within the allocation guideline of 1,700 sturgeon for this season. Regulation is consistent with compact action of January 29, 2009. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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: January 30, 2009.

Phil Anderson
 Director

NEW SECTION

WAC 220-33-02000A Columbia River season below Bonneville. Notwithstanding the provision of WAC 220-33-020 and WAC 220-33-010, 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 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: Drift gill nets only. 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. A maximum of 12 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open

SANCTUARIES: Sandy River.

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 12:01 p.m. February 13, 2009:

WAC 220-33-02000A Columbia River season below Bonneville.

WSR 09-04-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-13—Filed February 2, 2009, 3:18 p.m., effective February 6, 2009, 12:01 p.m.]

Effective Date of Rule: February 6, 2009, 12:01 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000S; 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: February 2, 2009.

Loreva M. Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000S 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. February 6 through 11:59 p.m. February 8, 2009, razor clam digging is allowed in Razor Clam Area 2 and that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. February 7 through 11:59 p.m. February 8, 2009, razor clam digging is allowed in Razor Clam Area 1. 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. February 9, 2009:

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