

WSR 09-15-183
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 22, 2009, 8:13 a.m., effective July 26, 2009]

Effective Date of Rule: July 26, 2009.

Purpose: The Washington legislature adopted SSB 5166 (chapter 408, Laws of 2009) regarding license suspension for noncompliance with child support orders. Division of child support (DCS) must adopt rules to implement this legislation, which is effective July 26, 2009. DCS has begun the rule-making process by filing a CR-101 preproposal notice of inquiry, as WSR 09-14-073, but will be unable to complete the regular adoption process by the effective date. DCS is adopting emergency rules at this time, but continues the regular rule-making process and will adopt final rules as soon as possible.

Amending WAC 388-14A-4500 What is the division of child support's license suspension program?, 388-14A-4505 The notice of noncompliance and intent to suspend licenses, 388-14A-4510 Who is subject to the DCS license suspension program?, 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?, 388-14A-4520 Signing a ((~~repayment~~) payment) agreement may avoid certification for noncompliance, 388-14A-4525 How to obtain a release of certification for noncompliance and 388-14A-4530 ((~~Administrative hearings~~) What happens at an administrative hearing regarding license suspension ((~~are limited in scope~~))); and new sections WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?, 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?, 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?, and 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-4500, 388-14A-4505, 388-14A-4510, 388-14A-4515, 388-14A-4520, 388-14A-4525, and 388-14A-4530.

Statutory Authority for Adoption: SSB 5166 (chapter 408, Laws of 2009), RCW 34.05.060, 43.20A.550, 74.04.-055, 74.04.057, 74.20A.310, 74.20A.320(10), 74.20A.350 (14).

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: SSB 5166 (chapter 408, Laws of 2009) has an effective date of July 26, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we are unable to complete the adoption process by the effective date. DCS continues the regular rule-making process and will adopt final rules as soon as possible.

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 4, Amended 7, 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 4, Amended 7, Repealed 0.

Date Adopted: July 20, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4500 What is the division of child support's license suspension program? (1) RCW 74.20A.-320 and sections 2 through 4 of SSB 5166 (chapter 408, Laws of 2009) provide((s)) that, in some circumstances, the division of child support (DCS) may certify for license suspension a noncustodial parent (NCP) who is not in compliance with a child support order. These statutes call((s)) the NCP "the responsible parent."

(a) "Certify" means to notify the department of licensing or other state licensing entities that the NCP is not in compliance with a child support order and to ask them to take appropriate action against licenses held by the NCP. Before DCS can certify an NCP, DCS serves a notice on the NCP as described in WAC 388-14A-4505 and 388-14A-4510. This notice is called the notice of noncompliance and intent to suspend licenses, and is sometimes called the notice of noncompliance.

(b) "Responsible parent" is defined in 388-14A-1020. The responsible parent is also called the "noncustodial parent."

(2) "Noncompliance with a child support order" is defined in RCW 74.20A.020(18) and in WAC 388-14A-4510 (3).

(3) When DCS certifies the NCP, the department of licensing or other licensing entities take action to deny, suspend, or refuse to renew the NCP's license, according to the terms of RCW 74.20A.320 ((~~(8) and (12)~~)) (4) and section 3 of SSB 5166 (chapter 408, Laws of 2009).

(4) This section and sections WAC 388-14A-4505 through 388-14A-4530 cover the DCS license suspension program.

(5) DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity. In determining which licensing entity receives the certification, DCS considers:

(a) The number and kind of licenses held by the parent; and

(b) The effect that suspension of a particular license will have in motivating the parent to pay support or to contact DCS to make appropriate arrangements for other relief.

(6) DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program.

(7) In certain circumstances spelled out in WAC 388-14A-4510 (2) and (3), DCS may serve the notice of noncompliance on a noncustodial parent but may stay the commencement of the ~~((twenty-day))~~ objection period in WAC 388-14A-4505 (4)(b).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) DCS must serve the notice by certified mail, return receipt requested. If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

(3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.

(4) The notice must contain the information required by RCW 74.20A.320(2), ~~((telling the NCP that))~~ including:

(a) ~~((The NCP may request an administrative hearing, but that the hearing is limited in scope (see WAC 388-14A-4530)))~~ The address and telephone number of DCS office that issued the notice;

(b) ~~((DCS will certify the NCP unless the NCP makes a request for hearing within twenty calendar days of the date of service of the notice, except when a longer period of time is given, as provided in WAC 388-14A-4510 (2) or (3);~~

~~((e) The NCP may avoid certification by agreeing to make timely payments of current support and agreeing to a reasonable payment schedule on the support debt;~~

~~((d) Certification by DCS will result in suspension or nonrenewal of the NCP's license by the licensing entity until DCS issues a release stating that the NCP is in compliance with the child support order;~~

~~((e) Suspension of a license may affect the NCP's insurance coverage, depending on the terms of any policy;~~

~~((f) Filing a petition to modify the support obligation may stay (or put a hold on) the certification process; and~~

~~((g) Even after certification, the NCP may obtain a release from certification by complying with the support order))~~ That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after receipt if the notice was served outside the state of Washington, to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request a hearing as provided in WAC 388-14A-4527;

(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.

(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may serve a notice of noncompliance on a noncustodial parent (NCP) who is not in compliance with a child support order ~~((when:))~~.

~~((a) ((The NCP is required to pay child support under a court order or administrative order;~~

~~((b) The NCP is at least six months in arrears; and~~

~~((c) The NCP is not currently making payments to the Washington state support registry under a wage withholding action issued by DCS.~~

~~((2))~~ DCS may serve a notice of noncompliance on an NCP who meets the criteria of ~~((subsection (1) above))~~ this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the ~~((twenty-day))~~ objection period in WAC 388-14A-4505 (4)(b) until the NCP has been out of jail or prison for thirty days.

~~((3))~~ (b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of ((subsection (1) above))

this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the ~~((twenty-day))~~ objection period in WAC 388-14A-4505 (4)(b) until the thirty days after the NCP's cash assistance grant is terminated.

~~((4))~~ (2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes less than six months' worth of child support.

(3) ~~((1))~~ Noncompliance with a child support order ~~((1))~~ for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an ~~((arrear- age or))~~ arrears or arrearage, totaling more than six months' worth of child support payments; and

~~((b))~~ (c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward ~~((s-a))~~ current support ~~((debt in an amount that is more than six months' worth of payments))~~ and arrearages ~~((-or~~

~~((e))~~ Failed to make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments)).

~~((5))~~ There is no minimum dollar amount for the six months of arrears. The following are examples of when a NCP is at least six months in arrears:

(a) The child support order requires monthly payments of five hundred dollars. The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears;

(b) The child support order requires monthly payments of one hundred dollars. The NCP has paid for the last few months, but owes a back debt of over six hundred dollars. This NCP is at least six months in arrears;

(c) The NCP owes a support debt according to a judgment, which requires payments of one hundred dollars per month. The NCP has not made payment for eight months. This NCP is at least six months in arrears; or

(d) The child support order required monthly payments of two hundred dollars, but the child is over eighteen so no current support is owed. However, the NCP has a debt of over twelve hundred dollars. This NCP is at least six months in arrears.

(6) For the purposes of the license suspension program, a NCP is in compliance with the child support order when the amount owed in arrears is less than six months' worth of support)).

(4) There is no minimum dollar amount for the six months of arrears. Some cases where an NCP fits the criteria for license suspension are:

Example 1. Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears.

Example 2. Assume the child support order sets current support at one hundred dollars per month: The NCP has paid

for the last few months, but owes arrears of over six hundred dollars. This NCP is at least six months in arrears.

Example 3. Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of over one thousand two hundred dollars. This NCP is at least six months in arrears.

Example 4. Judgment of three thousand dollars entered by the court: The order requires the NCP pay fifty dollars per month towards his arrears. The NCP has not made payments toward this obligation for eight months. This NCP is at least six months in arrears.

NEW SECTION

WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension? The division of child support (DCS) may certify a noncustodial parent (NCP) as being in noncompliance with a support order and may request the department of licensing (DOL) or any other licensing entity to suspend the NCP's license if:

(1) The NCP has failed to make a timely objection to a notice of noncompliance served under WAC 388-14A-4505. A timely objection must be filed within twenty days of receipt of the notice, or within sixty days of receipt if the notice was served outside of the state of Washington;

(2) The NCP has failed to file a motion with the appropriate court or administrative forum to modify the child support obligation within twenty days of service of the notice of noncompliance served under WAC 388-14A-4505 (or within sixty days if the notice was served outside of the state of Washington);

(3) The NCP has failed to comply with a payment agreement entered into under WAC 388-14A-4520;

(4) A hearing results in a final administrative order which determines that the NCP is not in compliance with a child support order and has not made a good faith effort to comply;

(5) The court enters a judgment on a petition for judicial review upholding an administrative order that determined that the NCP is not in compliance with a child support order and did not make a good faith effort to comply;

(6) The NCP has failed to comply with a payment schedule ordered by an administrative law judge (ALJ) under WAC 388-14A-4530; or

(7) The NCP failed to make satisfactory progress toward modification of the support order after a stay was granted under WAC 388-14A-4515(2).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support? (1) After service of the notice of noncompliance, the division of child support (DCS) stays ~~(delays)~~ certification action if the noncustodial parent (NCP) takes one of the following actions within twenty days of service ~~((of the notice))~~, or within sixty days of service if the notice was served outside of Washington:

(a) Contacts DCS and makes arrangements to pay the support debt in full;

~~(b) Requests an administrative hearing ((under WAC 388-14A-4530)) as provided in WAC 388-14A-4527; ((or))~~

~~((b)) (c) Provides proof that the NCP receives TANF, GAU, GAX or SSI;~~

(d) Provides proof that the NCP is currently incarcerated at a state or federal correctional facility;

(e) Provides proof that NCP has filed a proceeding to modify the support order; or

(f) Contacts DCS to negotiate ((a reasonable payment schedule on)) and sign a written payment agreement that addresses timely payments of current support and the arrears ((and agrees to make timely payments of current support)).

(i) A reasonable payment schedule is described in WAC 388-14A-4520;

(ii) The stay for negotiation and obtaining signatures may last a maximum of thirty calendar days ((after)) from when the NCP contacts DCS; and

~~((ii)) (iii) If no written payment ((schedule)) agreement has been ((agreed to in writing after)) signed within thirty calendar days ((have passed)) from the date NCP contacted DCS, DCS ((may)) proceeds with certification of noncompliance(;~~

~~(iii) A reasonable payment schedule is described in WAC 388-14A-4520, below; and~~

~~(iv) The NCP may request a conference board review under WAC 388-14A-6400 if the NCP feels that DCS has not negotiated in good faith)).~~

(2) If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.

~~((3)) (a) The stay for modification action may not exceed six months unless DCS finds good cause to extend the stay.~~

~~((4)) (b) The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification to DCS.~~

~~((5)) (3) A stay of certification does not require DCS to withdraw the notice of noncompliance.~~

(4) A stay of certification granted because the NCP is incarcerated, or because the NCP receives TANF, GAU, GAX or SSI is lifted thirty days after the justification no longer applies to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4520 Signing a ~~((repayment))~~ payment agreement may avoid certification for noncompliance. (1) If a noncustodial parent (NCP) signs a ~~((repayment))~~ payment agreement, the division of child support (DCS) stays the certification action. ((The NCP must agree to pay current support in a timely manner and make regular payments on the support debt.))

(2) The signing of a payment agreement does not require DCS to withdraw the notice of noncompliance.

(3) The ~~((repayment))~~ payment agreement must state that if the NCP fails to make payments under the terms of the agreement, DCS may resume certification action.

~~((3) The signing of a repayment agreement does not require DCS to withdraw the notice of noncompliance.))~~

(4) In ~~((setting the repayment amount))~~ proposing or approving a payment agreement, DCS must take into account:

(a) The amount of the arrearages.

(b) The amount of the current support order.

(c) The ~~((financial situation of the NCP and the))~~ earnings of the NCP.

(d) The needs of all children who rely on the NCP for support. ~~((The NCP must supply sufficient financial information to allow DCS to analyze and document the NCP's financial situation and requirements, including normal living expenses and emergencies.))~~

(e) Any documented factors which make the NCP eligible for a monthly arrears payment less than the amount suggested in the table in subsection (6) of this section, including but not limited to:

(i) Special needs children; or

(ii) Uninsured health care expenses.

(f) Any documented factors which make the NCP eligible for an arrears payment higher than the amount suggested in the table in subsection (6) of this section, including but not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

(g) If the NCP does not supply sufficient financial information and documentation to allow DCS to analyze and document the NCP's current financial situation and requirements, DCS may not be able to tailor a repayment plan to the individual circumstances of the NCP.

(5) The payment agreement must require timely payments of current support and on the arrears, but may in appropriate circumstances:

(a) Provide for the payment of less than the current monthly support obligation for a reasonable time without requiring any payment on the arrears; and

(b) Require a reasonable payment schedule on the arrears once the NCP is paying the entire current monthly support obligation.

(6) The payment agreement may, in appropriate cases, require the NCP to engage in employment-enhancing activities to attain a satisfactory payment level. These employment-enhancing activities must be tailored to the individual circumstances of the NCP.

(7)(a) A reasonable monthly arrears payment is defined as a percentage of the NCP's "adjusted net income," which is the NCP's net monthly income minus any current support obligation. Documented factors as specified in subsection (4) of this section may be the basis for adjustments to the amounts on this table in order to develop a payment agreement which is tailored to the individual financial circumstances of the NCP.

(b) The following table sets forth the suggested monthly payments on arrears:

| Monthly adjusted net income (ANI) | Monthly arrears payment = Percentage of ANI |
|-----------------------------------|---|
| \$1,000 or less | 2% |
| \$1,001 to \$1,200 | 3% |
| \$1,201 to \$1,500 | 4% |

| Monthly adjusted net income (ANI) | Monthly arrears payment = Percentage of ANI |
|-----------------------------------|---|
| \$1,501 to \$1,900 | 5% |
| \$1,901 to \$2,400 | 6% |
| \$2,401 to \$3,000 | 7% |
| \$3,001 or more | 8% |

~~((6))~~ (c) Examples of how to calculate the arrears payment are as follows:

| | | |
|-----------------------------|---|---------|
| (a) Monthly net income | = | \$1,500 |
| Current support | = | \$300 |
| Adjusted net income (ANI) | = | \$1,200 |
| Arrears payment = 3% of ANI | = | \$36 |
| (((\$1,200)) | | |
| (b) Monthly net income | = | \$3,100 |
| Current support | = | \$-0- |
| Adjusted net income (ANI) | = | \$3,100 |
| Arrears payment = 8% of ANI | = | \$248 |
| (((\$3,100)) | | |

~~((7))~~ The NCP must document any factors which make the NCP eligible for an arrears payment less than the amount shown in the table in subsection (5). Such factors include, but are not limited to:

- (a) Special needs children, or
- (b) Uninsured medical expenses.

~~(8)~~ The custodial parent and/or DCS must document any factors which make the NCP eligible for an arrears payment higher than the amount shown in the table in subsection (5). Such factors include, but are not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

~~(9)~~ If the NCP signs a repayment agreement under this section under the circumstances spelled out in WAC 388-14A-4510 (2) or (3), the NCP may make voluntary payments but DCS does not resume certification action until thirty days after NCP is released or stops receiving public assistance))

~~(8)~~ If the NCP and DCS are unable to agree to a payment plan, DCS schedules the matter for an administrative hearing.

~~(9)~~ If the NCP fails to make payments under the terms of the agreement, DCS may resume certification action with no further notice to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4525 How to obtain a release of certification for noncompliance. (1) After the division of child support (DCS) has certified a noncustodial parent (NCP) to a licensing entity, the NCP may obtain a release from DCS ~~((by taking the following actions))~~ if one of the following occurs:

(a) ~~((Paying))~~ NCP pays the support debt in full, in which case DCS withdraws the notice of noncompliance; ~~((or))~~

(b) ~~((Signing))~~ NCP enters into a ~~((repayment))~~ payment agreement under WAC 388-14A-4520 ~~((and paying the first installment due under the agreement. Signing a repayment~~

~~agreement does not require DCS to withdraw the notice of noncompliance))~~;

~~(c)~~ DCS confirms that the NCP receives GAU, GAX, TANF or SSI;

~~(d)~~ DCS confirms that the NCP is currently incarcerated at a state or federal correctional facility;

~~(e)~~ The prosecuting attorney determines that the NCP is substantially complying with a contempt repayment agreement and recommends release;

~~(f)~~ DCS receives any type of recurring payment, including but not limited to:

~~(i)~~ Employer payments;

~~(ii)~~ Unemployment compensation;

~~(iii)~~ Labor and industries benefits;

~~(iv)~~ Social security benefits;

~~(v)~~ Retirement account garnishments;

~~(g)~~ DCS believes that release of the certification for non-compliance will facilitate the NCP seeking employment, modification of the child support order(s), or compliance with the current order(s);

~~(h)~~ DCS certified the NCP because the NCP failed to make a timely objection to the notice of noncompliance and:

~~(i)~~ The NCP filed a late request for hearing; and

~~(ii)~~ The final administrative order entered under WAC 388-14A-4530 contains a finding that the NCP made a good faith effort to comply with the order and establishes a payment schedule.

~~(2)~~ If the NCP believes that DCS is not negotiating in good faith when trying to reach a payment agreement that would lead to release of the certification, the NCP may request a conference board under WAC 388-14A-6400.

~~(3)~~ By signing a payment agreement with DCS, the NCP waives the administrative hearing right associated with any notice of noncompliance under WAC 388-14A-4505 which was served before the agreement was signed.

~~(4)~~ DCS retains the right to reinstate the suspension action if the NCP meets the conditions of reinstatement but:

~~(a)~~ Fails to follow through in a timely fashion with any verbal or written agreement made with DCS; or

~~(b)~~ Fails to comply with the payment schedule contained in an administrative order entered under WAC 388-14A-4530.

~~(5)~~ DCS may reinstate the suspension action at any time after releasing the certification, as long as the NCP's case still meets qualifications for certification.

~~(6)~~ Unless the NCP pays the support debt in full, DCS is not required to withdraw the notice of noncompliance.

~~(7)~~ DCS must provide a copy of the release to any licensing entity to which DCS has certified the NCP.

~~((3))~~ ~~(8)~~ The NCP must comply with any requirements of the licensing entity to get the license reinstated or reissued.

NEW SECTION

WAC 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension? (1) After service of a notice of noncompliance and intent to suspend licenses under WAC 388-14A-4505, the noncustodial parent (NCP) may request an administrative

hearing, also known as an adjudicative proceeding, under chapter 34.05 RCW.

(2) A hearing request may be made in writing or orally, and may be made in person or by phone.

(3) A timely request for hearing must be received by the division of child support (DCS) within twenty days of service of the notice of noncompliance, or within sixty days if the notice was served outside of the state of Washington.

(4) The effective date of a written request for hearing is the day the request is received by DCS. A written request for hearing must include:

- (a) The NCP's current mailing address; and
- (b) The NCP's daytime phone number, if available.

(5) The NCP may make an oral request for hearing under WAC 388-14A-6100:

(a) The request must contain sufficient information for DCS to identify the NCP, the DCS action objected to, and the case or cases involved in the hearing request.

(b) The effective date of an oral request for hearing is the date that the NCP makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) If the NCP makes a timely request for hearing, DCS stays (delays) the certification process until a final administrative order is entered.

(7) If the NCP makes a late request for hearing after DCS has already certified the NCP to a licensing agency which has suspended a license, DCS schedules the matter for hearing with the office of administrative hearings, as provided in WAC 388-14A-4535.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4530 ((Administrative hearings) What happens at an administrative hearing regarding license suspension ((are limited in scope))? (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

- (a) Whether the person named in the child support order is the noncustodial parent (NCP);
- (b) Whether the NCP is required to pay child support under a child support order; ~~((and))~~
- (c) Whether the NCP is at least six months in arrears; and
- (d) Whether the NCP has made a good faith effort to comply with the order.

(2) If the administrative law judge (ALJ) finds that the NCP is not in compliance with the support order, but has made a good faith effort to comply, the ALJ must formulate a payment schedule after considering:

- (a) The amount of the arrearages owed;
- (b) The amount of the current support order;
- (c) The earnings of the NCP; and
- (d) The needs of all children who rely on the NCP for support.

(3) The ALJ must:

- (a) Consider the individual financial circumstances of the NCP in evaluating the parent's ability to pay; and
- (b) Establish a fair and reasonable payment schedule tailored to the NCP's individual circumstances.

(4) The payment schedule may:

(a) Include a graduated payment plan as described in WAC 388-14A-4520(5);

(b) Require the NCP to engage in employment-enhancing activities in order to attain a satisfactory payment level; and

(c) May be for the payment of less than current monthly support for a reasonable time.

(8) Unless the NCP shows an ability to pay immediately, the payment schedule is not required to include a lump sum payment for the amount of the arrears.

(9) The administrative order must contain a provision stating that, if the NCP does not comply with the payment schedule, DCS may proceed with the certification process with no further notice to the NCP.

(10) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

~~((3)) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.~~

~~(4))~~ (11) If the NCP requests a hearing on the notice of noncompliance under the circumstances spelled out in WAC 388-14A-4510 ~~((2) and (3))~~ (1)(a) or (b), DCS asks the office of administrative hearings to schedule a hearing. If the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP, DCS stays the certification process until thirty days after the NCP is released or stops receiving cash public assistance.

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

NEW SECTION

WAC 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended? (1) The noncustodial parent (NCP) may file a late request for hearing if the division of child support (DCS) has certified the noncustodial parent (NCP) because of failure to object to the notice of noncompliance as provided in WAC 388-14A-4512(1), even if the department of licensing (DOL) or other licensing entity has suspended the NCP's license.

(2) When an NCP files a late request for hearing, DCS does not release the certification until:

- (a) The NCP pays the back support debt in full;
- (b) DCS and the NCP sign a payment agreement under WAC 388-14A-4520;

(c) There is a final administrative order entered establishing a payment schedule because the NCP made a good faith effort to comply with the order; or

(d) There is a final administrative order entered determining that the NCP did not owe more than six months worth of support and that license suspension was not appropriate at the time of the certification.

(3) If the late request for hearing is filed within one year of the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530.

(4) If the late request for hearing is filed more than one year after the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530.

(a) The NCP must show good cause for the late request for hearing.

(b) The administrative law judge (ALJ) must find that the NCP has made a showing of good cause before granting relief in an administrative order.

(5) DCS and the NCP may negotiate and sign a payment agreement under WAC 388-14A-4520 at any time during this process.

NEW SECTION

WAC 388-14A-4540 When is a DCS conference board available regarding license suspension issues? (1) A noncustodial parent (NCP) may request a conference board under WAC 388-14A-6400 to resolve any complaints and problems concerning a division of child support (DCS) case.

(2) If the NCP feels that DCS is not acting in good faith when negotiating a payment agreement to avoid license suspension or to get a license reinstated, NCP may request a conference board at any time during the process except during the time period between the service of a notice of noncompliance under WAC 388-14A-4505 and the entry of a final administrative order under WAC 388-14A-4530.

WSR 09-16-001

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-143—Filed July 22, 2009, 1:08 p.m., effective July 22, 2009, 1:08 p.m.]

Effective Date of Rule: Immediately.

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: Repealing WAC 232-28-61900M; and amending WAC 232-28-619.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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 com-

mission 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: Extends the sturgeon retention fishery in the estuary because additional white sturgeon remain on the annual harvest guideline. Action is consistent with the sturgeon management plans and commission policy. Rule is consistent with joint state actions of Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife on July 21, 2009. There is insufficient time to promulgate permanent regulations.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407). Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule.

Representatives from the WDFW and ODFW 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: July 22, 2009.

Lisa M. Venereso
for Philip Anderson
Director

NEW SECTION

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

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries, except on Friday, Saturday, and Sunday from July 24 through July 26, 2009.

(2) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900M Exceptions to statewide rules—Columbia River sturgeon. (09-134)

**WSR 09-16-003
EMERGENCY RULES
OFFICE OF**

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-10—Filed July 22, 2009, 2:04 p.m., effective July 22, 2009, 2:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: These new rules implement chapter 175, Laws of 2009 (SSB 5480). This legislation created the Washington Health Care Discount Plan Organization Act with an effective date of July 26, 2009. The legislation gives the insurance commissioner the authority to adopt rules to establish the application process to obtain a discount plan organization license and to establish reporting and record-keeping requirements.

Statutory Authority for Adoption: Section 18, chapter 175, Laws of 2009 and RCW 48.02.060.

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

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

Reasons for this Finding: Emergency rule making will allow discount health care plan organizations to apply for licensure as required by the legislation. Regular rule making will commence at the same time as the emergency rule takes effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 0, Repealed 0.

Date Adopted: July 22, 2009.

Mike Kreidler
Insurance Commissioner

Chapter 284-38 WAC

HEALTH CARE DISCOUNT PLAN ORGANIZATION STANDARDS

NEW SECTION

WAC 284-38-005 Purpose. These regulations implement provisions of chapter 175, Laws of 2009 and create the processes and procedures for licensing a discount health organization.

NEW SECTION

WAC 284-38-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

"Applicant" means any discount plan organization applying for a license under these regulations, and includes a discount plan organization or person holding a license or other form of authority from another state to operate as a discount plan organization.

"Application" means the written request for a license and the information required by the commissioner to obtain a license to transact discount plan business.

"License" means the license issued by the commissioner required to transact discount plan business under these regulations.

"Renewal application" means the renewal application under these regulations.

NEW SECTION

WAC 284-38-015 Licensing forms and filing procedures. (1) An applicant applying for a new license or a licensed discount plan organization applying for license renewal must complete and file all required forms. All forms, including the application form, the renewal form, and the annual report form required by this regulation are available on the commissioner's web site at www.insurance.wa.gov. Applicants must fully complete and file only forms approved by the commissioner.

(2) If a licensed discount plan organization fails to file the renewal application or the renewal application fee sooner than ninety days before its license expires, the license will expire on its expiration date and the discount plan organization must complete and file a new application and pay the fee for a new license.

(3) Upon the expiration of a discount plan organization's license, all operations must be immediately suspended, including any advertising, marketing, solicitation, enrollment, and renewal of contracts or other activities specified under these regulations.

(4) Annual report filing requirements:

(a) Licensed discount plan organizations may file the information required for their initial annual report at the time they file their initial renewal application with the commissioner if their renewal date occurs prior to March 31st, and do not have to prepare a separate annual report filing or pay the annual report fee.

(b) If a licensed discount plan organization does not include its annual report information with its initial renewal application, it must file an annual report with the commissioner prior to March 31st. If the initial renewal application is due after March 31st, a licensed discount plan organization must file an annual report by March 31st, and may not defer filing the annual report on the basis that it plans to include the annual report information with its renewal.

(5) Any discount plan organization that has transacted or is transacting discount plan business to which the regulation applies prior to or as of July 26, 2009, must complete and file the commissioner's required application form along with all other required forms and information, on or before January 26, 2010. If a discount plan organization does not apply for a license as specified by the commissioner on or before October 26, 2009, it must discontinue operations after January 26, 2010.

NEW SECTION

WAC 284-38-020 Audited financial statements. (1) All audited financial statements filed with the commissioner under these regulations must:

(a) Be prepared in accordance with generally accepted auditing principles;

(b) Be certified by an independent certified public accountant; and

(c) Meet the standards and requirements of WAC 284-07-100 through 284-07-230; provided, that WAC 284-07-100 (5), (6), and (7) shall not apply to discount plan organizations; and provided further, that discount plan organizations shall not be required to file any report, letter, or other docu-

ment required to be filed with the commissioner by WAC 284-07-100 through 284-07-230 with the National Association of Insurance Commissioners (NAIC).

(2) All audited financial statements filed with an annual report under this regulation shall cover the same fiscal period as the discount plan organization's annual report.

(3) Unless an applicant has the commissioner's written permission, the applicant's own most recent financial statements audited by an independent certified public accountant must accompany the application. An applicant granted prior permission by the commissioner to substitute its parent company's audited financial statements for the financial statements of the applicant must specifically segregate and report the applicant's financial results as required by the commissioner.

(4) Unless a licensed discount plan organization has the commissioner's written permission, the licensee must include its own most recent financial statements audited by an independent certified public accountant with its renewal application or the annual report filed with the commissioner. A discount plan organization granted prior permission by the commissioner to substitute its parent company's audited financial statements for the financial statements of the applicant must specifically segregate and report the discount plan organization's financial results as required by the commissioner.

(5) If the commissioner determines there is good cause for a delay, the commissioner may grant an extension of time to file the audited financial statement. Discount plan organizations or applicants must submit a written request for an extension of time to file the audited financial statement at least ten business days prior to the filing deadline.

NEW SECTION

WAC 284-38-025 Indemnity requirements for discount plan organizations. (1) A discount plan organization providing a surety bond to protect the financial interests of Washington members must name the state of Washington as the obligee, but the bond will be for the benefit of the Washington members who have purchased the discount plan.

(2) A discount plan organization, in lieu of a surety bond, must provide a deposit in trust with the commissioner to protect the financial interests of Washington members.

(a) The deposit in trust must be in cash or other investments specifically authorized and eligible for investment pursuant to chapter 48.13 RCW.

(b) All deposits and withdrawals must be made by using forms found on the commissioner's web site at www.insurance.wa.gov.

NEW SECTION

WAC 284-38-030 Discount plan organization—General requirements for records availability and form and report filing. (1) All discount plan organization records and reports must be maintained at the discount plan organization's principal business address and are subject to review by the commissioner's representatives during the discount plan organization's usual and customary business hours.

(2) The commissioner may require discount plan organizations to provide copies of discount plan organization docu-

ments, records, and reports in lieu of making the records available for on-site review.

(3) All records, reports, notices, or other documents required by this regulation must be transmitted electronically in Adobe Acrobat PDF format.

WSR 09-16-015

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed July 23, 2009, 3:37 p.m., effective July 26, 2009]

Effective Date of Rule: July 26, 2009.

Purpose: Amendments to WAC 192-30-035 implement HB 1338 (chapter 83, Laws of 2009), effective July 26, 2009. The new law broadens the ability of the commissioner of the employment security department to waive application of the higher tax rate for delinquent taxpayers if the employer acted in good faith and application of the higher rate would be inequitable. The WAC provides standards for the commissioner to apply in determining whether to waive the higher rate.

Citation of Existing Rules Affected by this Order: Amending WAC 192-320-035.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.29.010.

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 amendments to RCW 50.29.010 in HB 1338 take effect July 26, 2009, and specifically refer to the commissioner adopting rules to determine if an employer acted in good faith and if applying the delinquent tax rate would be inequitable. The timelines for adoption of permanent rules preclude adoption of a permanent rule by July 26, 2009. Adoption of consistent standards for the commissioner's determination is necessary for the general welfare, including maintenance of the unemployment insurance trust fund.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: July 21, 2009.

Paul Trause
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports? (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1. These minimum amounts only apply to taxes, interest, and penalties, not to failure to submit required reports.

(3)(a) This section does not apply ~~((to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority))~~ if the otherwise qualified ~~((domestic))~~ employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed only for manifest injustice based on clear and convincing evidence.

(b) Except for services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the commissioner will not find that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30 and no reasonable alternative personnel were available and any amounts due are paid no later than December 31 of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that ~~(he or she)~~ the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

(8) The amendments to this section effective July 26, 2009, apply only to tax rates assigned after that date.

WSR 09-16-016
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 24, 2009, 9:20 a.m., effective July 24, 2009, 9:20 a.m.]

Effective Date of Rule: Immediately.

Purpose: Revises WAC 181-78A-325 changing the number of hours of internship for preparation programs to provide to administrators to receive their certification.

Citation of Existing Rules Affected by this Order: Amending X [WAC 181-78A-325].

Statutory Authority for Adoption: RCW 28A.410.210, 28A.305.130, and 28A.410.010.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Budget reductions require adjustments in certification internship requirements for administrators. The number of hours is reduced from seven hundred twenty to five hundred forty.

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

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

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

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

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

Date Adopted: July 24, 2009.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-325 Program approval requirement—Field experience for all administrators. The internship shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought. Compo-

nents of the required internship shall include demonstration by the candidate that he or she has the appropriate, specific relevant skills pursuant to WAC 181-78A-270. An approved preparation program for administrators and, prior to August 31, 1998, for principals, shall require an internship of at least three hundred sixty hours: Provided, That an approved preparation program for principals shall require for those persons entering the program August 31, 1998, and after, an internship which requires practice as an intern during a full school year. A "full school year" shall mean seven hundred twenty hours of which at least one-half shall be during school hours, when students and/or staff are present and include the principal performance domains as stated in WAC 181-78A-270 (2)(a) or (b): Provided, That an approved preparation program for principals shall require for those persons beginning their internship August 1, 2009, and after, an internship which requires practice as an intern during the full school year. A "full school year" shall mean five hundred forty hours of which at least one-half shall be during school hours, when students and/or staff are present. Provided further, That an approved preparation program for principals shall require for those individuals entering the program on or after September 1, 2004, an internship that shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-270 (2)(b) and meets, at minimum, the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval.

WSR 09-16-019

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 24, 2009, 12:28 p.m., effective July 26, 2009]

Effective Date of Rule: July 26, 2009.

Purpose: Recently enacted state statute E2SHB 1935 increased the adult family home application processing fee and yearly licensing fee for adult family home applicants and providers. Governor Gregoire signed the bill into law on May 18, 2009, effective July 26, 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10025 and 388-76-10070.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The legislature just passed E2SHB 1935 which increased the application processing fee and annual licensing fee for adult family home applicants. In order for the cost savings to be realized and to meet the effective date of the bill, these rules must be adopted by emergency.

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: June 29, 2009.

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10025 License annual fee. (1) The adult family home must pay an annual license fee ((is fifty dollars per adult family home per year)) as required in chapter 70.128 RCW.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the ~~((department does not renew the license))~~ adult family home license is not renewed, the annual license fee is refundable.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10070 Application—Fees required. (1) The applicant must ~~((send a one hundred dollar fee with the application form:~~

~~(a) Fifty dollars of this fee is the application processing fee; and~~

~~(b) Fifty dollars is the annual license fee))~~ pay all processing and license fees established by chapter 70.128 RCW.

(2) The applicant must submit the required fees with the application form.

(3) The processing fee will be returned as required by chapter 70.128 RCW.

(4) The ~~((fifty dollar annual))~~ license fee will be returned to the applicant ~~((by the department))~~ if the application is withdrawn, voided or the license is denied.

WSR 09-16-020
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed July 24, 2009, 12:34 p.m., effective July 26, 2009]

Effective Date of Rule: July 26, 2009.

Purpose: The department is amending WAC 388-832-0145 on an emergency basis to revise eligibility for respite services for individuals participating in the individual and family services program as directed by the legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 388-832-0145.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 71A.12.161.

Other Authority: SB 5547, chapter 312, Laws of 2009 PV 61st legislature, chapter 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: This department was directed to implement, effective July 26, 2009 (SB 5547), changes to eligibility for respite for individuals participating in the individual and family services program. It is necessary to file the emergency rule to prevent clients or potential clients from being wrongly found ineligible for services or benefits. A CR-101 is being filed concurrently with this emergency rule to begin the regular rule-making process.

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

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

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

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

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

Date Adopted: June 19, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0145 Who is eligible to receive respite care? You are eligible to receive respite care if you are approved for IFS program services and:

(1) You live in your family home and no one living with you is paid to be your caregiver((-);

(2) You ~~((live))~~ are an adult living in your family home with a ((paid caregiver who is your natural, step, or adoptive)) parent who provides personal care for you; or

(3) You are an adult living with a family member who has replaced your parent as your primary caregiver and who provides personal care to you.

WSR 09-16-031
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE

[Filed July 27, 2009, 1:37 p.m., effective July 27, 2009, 1:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: RCW 69.07.103 directs the department to adopt requirements for a temporary permit for the slaughter, preparation and sale of 1,000 or fewer whole, raw pastured chickens. The 2009 legislature amended that section (SSB 5350) and expanded coverage to include poultry and the option of a one-year or two-year special permit. Due to the changes in the statute, the department must amend its rules under chapter 16-170 WAC for implementation of the expanded program.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-170-040; and amending WAC 16-170-010 through 16-170-037 and 16-170-050 through 16-170-180.

Statutory Authority for Adoption: RCW 69.07.103.

Other Authority: Chapters 69.07 and 34.05 RCW, chapter 114, Laws of 2009.

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 legislative changes became effective July 26, 2009. In order to ensure a smooth implementation of the expanded provisions while continuing to safeguard the consuming public's food, this emergency is necessary to cover the period between the effective date of the legislative changes and the effective date of the department's permanent rules. The department has initiated rule-making proceedings and held a hearing on the amendments. Permanent adoption of the amendments will be filed on July 28, 2009, and will become effective thirty-one days after filing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 25, Repealed 1.

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

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

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

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

Date Adopted: July 27, 2009.

Robert W. Gore
Deputy Director

Chapter 16-170 WAC

SPECIAL (~~TEMPORARY~~) PERMITS FOR SLAUGHTERING (~~PASTURED CHICKENS~~) POULTRY

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-010 What is the purpose of this chapter? The purpose of this chapter is to implement chapter (~~397, Laws of 2003~~) 69.07 RCW by establishing rules (~~regulating~~) relating to the:

(1) Issuance of special (~~temporary~~) permits regulating the slaughter, preparation and sale of one thousand or fewer whole raw (~~pastured chickens~~) poultry in a calendar year by the agricultural producer (~~of those chickens~~) when the (~~chickens~~) poultry are sold directly to the ultimate consumer at the producer's farm.

(2) Conditions under which (~~the pastured chickens~~) poultry identified in this (~~section~~) chapter are slaughtered, prepared and sold that are generally patterned after those established by the state board of health for temporary food service establishments under chapter 246-215 WAC but are tailored to poultry slaughter, preparation, and sale activities.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-020 What definitions are important to this chapter? (1) In addition to the definitions contained in this section, definitions found in chapters 69.04 and 69.07 RCW, chapter 246-215 WAC and Title 21 CFR may apply.

(2) For the purposes of this chapter, the following definitions apply:

"**Adequate**" means that which is needed to accomplish the intended purpose in keeping with good public health practices.

"**Agricultural producer**" means a person or persons who raise (~~pastured chickens~~) poultry and who slaughter and sell one thousand or fewer (~~of the chickens~~) whole raw poultry from their farm directly to the ultimate consumer.

"**Authorized person**" means a person or persons who work with the agricultural producer in the preparation and slaughter of (~~pastured chickens~~) poultry under this chapter.

(~~"Chicken" means the species Gallus domesticus.~~)

"**Department**" means the Washington state department of agriculture (WSDA).

"**Director**" means the director of the WSDA.

(~~"Pastured chicken" means a chicken that has lived on pasture, range, or ground covered with vegetation that is suitable for grazing, during at least half the life span of the animal.~~)

"**Potable water**" means water that is(~~:~~

(a) ~~Safe and sanitary;~~

(b) ~~Free from coliform; and~~

(c) ~~From an approved and monitored source~~) in compliance with chapter 16-165 WAC and with the Washington state department of health's drinking water quality standards in chapters 246-290 and 246-291 WAC.

"**Poultry**" means domesticated fowl that is valued for its meat or eggs such as chickens, turkeys, ducks or geese.

"**Sanitize**" means to adequately treat (~~chicken~~) poultry slaughtering, preparation and sale surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the whole raw (~~chicken~~) poultry or its safety for the consumer.

"(~~Temporary~~) **Special permit**" means a permit to slaughter (~~chickens covered by this chapter, which is valid for the calendar year for which it is~~) poultry issued under RCW 69.07.103. The permit expires on December 31st and is issued for either one or two years as requested by the permit applicant.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-030 Who is required to obtain a (~~temporary~~) special permit to slaughter, prepare and sell (~~pastured chickens~~) poultry? (~~If you are~~) An agricultural producer of (~~pastured chickens~~) poultry who slaughters and prepares one thousand or fewer (~~pastured chickens~~) poultry in a calendar year and sells (~~those chickens~~) the poultry as whole raw (~~chickens~~) poultry from (~~your~~) their farm to the ultimate consumer, (~~you~~) must obtain a (~~temporary~~) special permit before (~~you~~) slaughter of the poultry.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-035 How can I obtain a (~~temporary~~) special permit? (1) (~~You can request~~) An application for a (~~temporary~~) special permit may be obtained by:

Writing to:

Washington State Department of Agriculture

Food Safety Program

P.O. Box 42560

Olympia, WA 98504-2560; or

Calling 360-902-1876; or

Faxing to 360-902-2087; or

Accessing web site <http://agr.wa.gov>.

(2) The department must receive (~~your~~) the completed special permit application packet along with check or money order for (~~seventy-five dollars~~) the permit fee at least six weeks (~~before you plan to~~) prior to the planned slaughter (~~chickens~~) of poultry. In accordance with RCW

69.07.103(4), the fee for the special permit is seventy-five dollars for one year, or one hundred twenty-five dollars for two years.

~~((You))~~ (3) The special permit application packet must include:

- (a) A completed application form;
- (b) A diagram of ~~((your))~~ the slaughter/preparation site;
- (c) A description of ~~((your))~~ the processing steps or a process flow diagram;
- (d) The proposed days or dates of slaughter for the current year;
- (e) A description of ~~((your))~~ the rinse water and offal disposal procedures; and
- (f) Documentation verifying that the water ~~((you use))~~ used at ((your)) the slaughter/preparation site complies with the requirements in WAC 16-170-155. If the well, spring or other private water supply, the water must have a passing bacterial test conducted within sixty days of submitting the application to the department. A copy of the test results must be attached to the special permit application.

~~((3))~~ (4) Once WSDA receives ~~((your))~~ the special permit application, ((you)) the applicant will be contacted ((for)) to schedule an on-site inspection. The inspection must occur before ((your)) the special ((temporary)) permit can be further processed or issued.

~~((4))~~ (5) Once received, ~~((your))~~ the special permit must be prominently and conspicuously posted at ((your)) the slaughter ((facility)) site so ((your)) customers ((can)) are able to see it.

~~((5) You are prohibited from))~~ (6) Slaughtering, preparing and selling ~~((chickens))~~ poultry regulated by this chapter ((until you receive your)) is prohibited prior to receipt of the special ((temporary)) permit.

NEW SECTION

WAC 16-170-036 What other information must I submit to the department if I am issued a two-year special permit? A two-year special permit holder must submit to the department the following information at least six weeks prior to slaughtering poultry during the second year of the permit:

- (1) The proposed second year days or dates of slaughter; and
- (2) If the site utilized a well, spring or other private water supply, a copy of a passing bacterial test conducted within sixty days prior to submitting the second year slaughter dates to the department.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-037 What type of slaughter/preparation site diagram is required? (1) ~~((Your))~~ The site diagram must clearly show the location of all poultry slaughter and preparation equipment, contact work surfaces, chilling equipment, equipment washing and sanitizing sinks or tubs, hand-washing areas, rinse water and offal collection areas and ((chicken)) poultry rearing areas.

(2) ~~((Everything))~~ All items illustrated on ((your)) the site diagram under subsection (1) of this section must be clearly labeled.

NEW SECTION

WAC 16-170-041 Must I reapply for a special permit if there is a change in the conditions under which my two-year special permit was issued? (1) If a significant change in the conditions under which the two-year special permit is issued, you must reapply for a special permit under WAC 16-170-035. Significant change under this section means a substantial change in the information previously submitted to the department under WAC 16-170-035.

(2) If the special permit holder was issued a two-year special permit and must reapply for a permit under this section, the department will apply fifty dollars of the two-year permit fee towards the new permit application fee.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-050 Must I notify the department before I change the dates I plan to slaughter my ((chickens)) poultry? ~~((If you wish to))~~ The department must be notified at least one week in advance if slaughter ((pastured chickens)) of poultry regulated by this chapter is planned on dates other than those ((requested in your application, you must notify)) previously reported to the department. The department may be notified by mail, e-mail, fax, or by telephone ((with)) followed by a written confirmation ((at least one week before you slaughter any chickens regulated by this chapter)).

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-060 What happens when I reach the one thousand ((chicken)) poultry limit in the statute? ~~((When you have slaughtered and sold one thousand whole raw pastured chickens to ultimate consumers from your farm in a calendar year, you no longer qualify for a temporary special permit for the remainder of the calendar year.))~~ The special permit issued under this chapter provides for the slaughter of a total of one thousand or fewer whole raw poultry to the ultimate consumer. Agricultural producers who slaughter more than one thousand ((chickens)) poultry in a calendar year must comply with the requirements of chapter 69.07 RCW.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-070 What are the site requirements for slaughtering, preparing and selling ((chickens)) poultry covered by this chapter? At a minimum, ~~((your))~~ the poultry slaughter/preparation site must:

- (1) Be constructed or assembled to minimize insects, pests, birds, dust, mud and overhead contamination;
- (2) Include adequate lighting to illuminate the areas where ~~((chickens))~~ poultry are slaughtered, prepared and sold;
- (3) Have an adequate handwashing station;
- (4) Be readily accessible to a toilet facility;
- (5) Include potable running water;

(6) Include a means of safely disposing of rinse water and offal; and

(7) Means of properly cooling slaughtered ~~((chickens))~~ poultry unless the customer takes possession within four hours.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-075 What requirements apply to the equipment used to slaughter, prepare and sell ~~((chickens))~~ poultry covered by this chapter? All equipment used to slaughter, prepare and sell poultry must be readily cleanable and in good repair.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-080 Can a mobile processing unit be used to slaughter, prepare and sell ~~((pastured chickens))~~ poultry covered by this chapter? If the mobile processing unit (MPU) is a self-contained processing unit that meets all of the conditions designed for the sanitary processing of ~~((chickens))~~ poultry under this chapter, a MPU may be used.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-090 Who can be in my poultry slaughter site while the slaughter-preparation process is taking place? (1) Only authorized persons ~~((can be in your))~~ may be present in the poultry slaughter site while the slaughter-preparation process is taking place. Unauthorized persons must be kept out of the site.

(2) Any authorized person infected with a communicable disease, has open sores or infected cuts on hands, is vomiting or has diarrhea is prohibited from working in ~~((your))~~ the poultry slaughter site.

(3) Authorized persons are prohibited from smoking, eating or drinking while in ~~((your))~~ the poultry slaughter site.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-100 Must I wear protective clothing while slaughtering, processing and selling ~~((pastured chickens))~~ poultry covered by this chapter? ~~((+))~~ Anyone slaughtering, preparing and selling ~~((pastured chickens))~~ poultry covered by this chapter must:

~~((+))~~ (1) Wear clean and adequate clothing.

"Clean and adequate" means that the clothing must be:

~~((+))~~ (a) Clean at the start of the slaughter-preparation process; and

~~((+))~~ (b) Changed when the clothing becomes soiled when contamination of the raw whole ~~((chicken))~~ poultry, any process work surface, the equipment used to chill slaughtered ~~((chickens))~~ poultry or the bags used to transport ~~((chickens))~~ poultry that are sold becomes imminent; and

~~((+))~~ (c) Suitable to the specific part of the process (slaughter, preparation or sale) ~~((in which you are engaged))~~.

~~((b))~~ (2) Remove hand jewelry that cannot be adequately sanitized during periods when carcasses are handled by hand. If such hand jewelry cannot be removed, impermeable or disposable gloves must be worn.

~~((+))~~ (3) Maintain gloves, if they are used in processing, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material.

~~((2))~~ (4) Clean and effective hair restraints, such as hairnets or beard nets are not required, but hats, caps, scarves or other head covers are recommended to prevent contamination of the whole raw ~~((chickens))~~ poultry being slaughtered, prepared and sold.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-110 Can I store personal garments and belongings in my poultry slaughter site? All personal garments and belongings must be stored separately and apart from ~~((your))~~ the poultry slaughter site to ensure that they do not become a source of contamination to the raw whole ~~((chickens))~~ poultry, slaughter and preparation work surfaces and equipment, and the bags used to transport ~~((chickens))~~ poultry that are sold.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-115 Can I store detergents, sanitizers and other materials in my poultry slaughter site? (1) ~~((You can store))~~ Commercially purchased detergents, sanitizers and other materials related to the process may be stored in ((your)) the poultry slaughter site if they are properly labeled with:

(a) Product name;

(b) Chemical description;

(c) Directions for use;

(d) Any required precautionary and warning statements;

(e) First-aid instructions;

(f) Name and address of the manufacturer or distributor; and

(g) Any other information required by the U.S. Environmental Protection Agency or other laws or rules.

(2) ~~((You can store))~~ Small "transport" or "use" containers containing detergents, sanitizers or other materials may be stored in ((your)) the slaughter site but only under the following conditions:

(a) The contents must be properly identified on the container. Labeling the container with the common name is acceptable if the original commercially purchased storage container is on hand and properly identified.

(b) Food containers must not be used as containers for detergents, sanitizers or toxic materials.

(c) Containers used for detergents, sanitizers or other materials must not be used as food containers.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-120 Must I wash my hands before slaughtering ~~((chickens))~~ poultry? (1) ~~((You))~~ Anyone

involved in the poultry slaughter process must adequately wash (~~your~~) their hands:

(a) Before (~~you begin~~) the poultry slaughtering process begins;

(b) Between the slaughtering and preparation steps in the process;

(c) Between the poultry preparation and sale steps in the process;

(d) After each absence from the poultry slaughter (~~facility~~) site; and

(e) Any time (~~your~~) hands become contaminated.

(2) "Adequately washing (~~your~~) hands" means thoroughly washing (~~your~~) hands to prevent contaminating (~~your~~) the slaughtered (~~chickens~~) poultry. Adequate hand-washing methods consist of:

(a) Applying soap to (~~your~~) hands;

(b) Using warm water;

(c) Scrubbing your hands thoroughly; and

(d) Using methods to rinse and dry (~~your~~) hands that prevent contamination.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-125 Are handwashing stations required at my (~~chicken~~) poultry slaughter site? (1) Anyone involved in (~~your chicken~~) the poultry slaughter process must have access to at least one handwashing station equipped with warm running water, hand soap, and paper towels.

(2) Handwashing stations must be conveniently located in (~~your~~) the poultry slaughter site and near (~~your~~) toilet facilities.

(3) If handwashing stations are not conveniently located in (~~your~~) the poultry slaughter site and near (~~your~~) toilet facilities, five-gallon insulated containers with continuous flow spigots filled with warm water between one hundred and one hundred and twenty degrees Fahrenheit with pump type liquid soap, paper towels and five-gallon buckets to catch rinse water are required on-site and near (~~your~~) the toilet facilities.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-130 Can I use hand dips at my (~~chicken~~) poultry slaughter site? (1) "Hand dips" or "hand sanitizing stations" are recommended but not required in (~~your chicken~~) the poultry slaughter site. Sanitizing (~~your~~) hands using hand dips or hand sanitizing stations is not a substitute for adequate handwashing methods. (~~(2)~~) However, if (~~you use~~) hand dips are used, they must be properly positioned and maintained.

(~~(3)~~) (2) "Properly maintained" means sanitizing solutions are:

(a) Checked and recharged to a strength equal to 100 PPM chlorine or 25 PPM iodine; and

(b) Changed every four hours while in use.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-135 Do I need a toilet near my (~~chicken~~) poultry slaughter site? (1) At least one toilet must be available and conveniently located at (~~your chicken~~) the poultry slaughter site.

(2) A domestic toilet is sufficient if (~~your~~) the poultry slaughter operation is a family operation where only family members are employed. However, if (~~you have~~) the operation has employees, (~~you must provide~~) toilet facilities must be provided at (~~your~~) the slaughtering site or (~~allow your~~) employees must be allowed to use (~~your~~) the domestic toilet.

(3) Portable chemical toilets may be used at the poultry slaughter site if they are conveniently located with a self-closing door, screened to exclude insects, and properly maintained.

(4) All nondomestic toilet areas must be kept clean, free of trash and litter, and in good repair. All doors used to enter the nondomestic toilet area must be self-closing and must not open directly into (~~your~~) the poultry slaughter site.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-140 What offal and rinse water disposal requirements apply to my (~~chicken~~) poultry slaughter site? (~~Your chicken~~) The poultry slaughter site must be designed and maintained to ensure that the:

(1) Offal and rinse water the site generates are readily and safely removed; and

(2) Offal and rinse water do not create an unsanitary condition or contaminate:

(a) The raw whole (~~chickens that you slaughter~~) poultry;

(b) Any potable water stored and used at (~~your~~) the slaughter site;

(c) Any product contact surfaces at (~~your~~) the slaughter site; or

(d) Any bags used to package raw whole (~~chickens~~) poultry sold to (~~your~~) the ultimate consumers.

(3) (~~Your~~) The rinse water disposal system must not allow any backflow from or cross connection between the piping that discharges rinse water and the piping that carries potable water to the (~~chicken~~) poultry slaughter area.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-145 How do I store my (~~chicken~~) poultry slaughter equipment and utensils to prevent contamination? (1) All of (~~your chicken~~) the poultry slaughter equipment and utensils must be stored so they will not become contaminated between uses.

(2) All utensils used to slaughter and prepare (~~chickens~~) poultry, such as knives, scrapers, scoops, shovels, cutters, and other hand tools and equipment, must be placed or stored to prevent contact surfaces from being contaminated.

(3) Contaminated equipment and utensils must be cleaned and sanitized before they are used again.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-150 How do I ensure that my ~~((chicken))~~ poultry slaughter contact surfaces are clean and maintained in a sanitary condition? (1) All contact surfaces of equipment, utensils, containers and other articles used in the slaughter and preparation of ~~((chickens))~~ poultry, must be kept free of any residue or contaminant that could contaminate or adulterate (as defined in RCW 69.04.210), the raw whole ~~((chicken))~~ poultry carcass.

(2) Residues and contaminants must frequently be removed from all slaughter and preparation contact surfaces to prevent the residues from becoming:

(a) Unwholesome or unfit for the raw whole ~~((chicken))~~ poultry carcass;

(b) Decomposed, filthy, or putrid; or

(c) Injurious to public health.

(3) All poultry slaughter and preparation contact surfaces must be sanitized:

(a) Before they are used; and

(b) After they are cleaned.

(4) ~~((You must keep))~~ Δ separate bucket of sanitizer must be kept in ~~((your))~~ the poultry slaughter site for rinsing/storing the wipe down cloths used to sanitize all slaughter equipment and slaughter/preparation contact surfaces. The sanitizing solution in the bucket should be at a minimum 100 ppm (mg/L) for chlorine solution or 50 ppm (mg/L) for iodine solution.

(5) Any noncarcass contact surfaces of equipment used in the slaughter of ~~((chickens))~~ poultry must be kept reasonably free of dirt, old slaughter/preparation residues, foreign material, dust, mold, mildew, slime and other accumulations that occur as a result of the slaughter/preparation operation.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-155 What requirements apply to the water used in my poultry slaughter site? (1) Any water ~~((you use))~~ used in the slaughter, preparation or sale of your ~~((chickens))~~ poultry must be of a safe and sanitary quality, which means the water supply is potable from an approved source and is monitored according to applicable laws and rules.

(2) Processors that operate from single-family residences on private water supplies need only meet bacteriological testing requirements. Optionally, potable water may be hauled onto the poultry slaughter site for use by the processor as long as the transport vehicle and water are of safe and sanitary quality.

(3) Water used from a private water system for the slaughter, preparation or sale of poultry must be sampled and tested at least annually. Copies of ~~((your))~~ water test reports must be on file at ~~((your))~~ the farm and available for review by WSDA during routine slaughter site inspections.

(4) Any ice ~~((you manufacture))~~ manufactured on ~~((your))~~ the farm for use in ~~((your))~~ the poultry slaughter process must be manufactured from potable water.

(5) All ice used at the poultry slaughter site that ~~((you do))~~ is not ~~((manufacture))~~ manufactured on the farm must be from an approved source.

(6) All ice ~~((that you use))~~ used at ~~((your chicken))~~ the poultry slaughter site must be properly handled and stored to protect against contamination.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-170 What requirements apply to the storing and handling of the bags I give my customers to transport the ~~((chickens))~~ poultry they purchase from me? (1) All bags ~~((that you use))~~ used to package the slaughtered whole ~~((chickens that you sell to your customers))~~ poultry must be new, of food grade quality and properly handled and stored, which means they must be protected from potential sources of contamination when they are handled and stored.

(2) Methods of properly handling and storing ~~((your))~~ the poultry slaughter site include, but are not limited to:

(a) All bags must be stored off of the floor or any other unsanitary surfaces.

(b) All bags must be stored in closed boxes or cartons before they are used.

(c) Bags must be removed from the closed box or carton in a way that prevents contamination.

(d) When a slaughtered whole ~~((chicken))~~ poultry is inserted into a bag, the bag must be handled so it and the ~~((chicken are))~~ poultry is not exposed to contamination by dust, foreign material or other contaminants.

(e) Any bag dropped on the floor or some other unsanitary surface must not be used.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-175 What requirements apply to the chilling and storing of slaughtered ~~((chickens))~~ poultry?

(1) All slaughtered ~~((chickens))~~ poultry must be chilled to a temperature at or below forty-five degrees Fahrenheit within four hours of slaughter unless the customer takes possession of the slaughtered ~~((chickens))~~ poultry during this time.

(2) Chilling poultry may be accomplished through the use of mechanical refrigeration, an ice chest using ice from an approved source (see WAC 16-170-155), or by being immersed in cold running water.

(3) A temperature control (TC) must be used to monitor slaughter cool down temperature by inserting a calibrated thermometer into the thickest portion of the first slaughtered poultry carcass and monitoring the temperature to ensure proper chilling at or below forty-five degrees Fahrenheit within four hours of slaughter.

(4)(a) Slaughtered ~~((chickens))~~ poultry can be stored for up to forty-eight hours before they are sold.

(b) During their storage period, ~~((chicken))~~ poultry carcass temperatures must be kept at or less than forty-five degrees Fahrenheit by mechanical refrigeration equipped with a thermometer or by maintaining the carcasses in a prop-

erly designed storage container with the use of a temperature control (TC) as outlined in subsection (3) of this section.

(5) All chilled and/or stored (~~(chicken)~~) poultry carcasses must be protected from physical, chemical, microbial contamination and deterioration.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-180 What recordkeeping requirements apply to my (~~(temporary)~~) special permit (~~(chicken)~~) poultry slaughter operation? (1) At a minimum, (~~(you must keep)~~) the following records must be kept at (~~(your)~~) the special permit holder's farm:

(a) (~~(Your chicken)~~) A record of the poultry slaughter dates;

(b) The number of (~~(chickens)~~) poultry by species slaughtered on each slaughter date and the cumulative total of (~~(chickens)~~) poultry by species slaughtered;

(c) The temperature control log monitoring proper (~~(chicken)~~) poultry slaughter cool down and storage; and

(d) The water testing records if required by WAC 16-170-155.

(2) All records required under subsection (1) of this section must be:

(a) Maintained so that the information they intend to convey is clear and understandable.

(~~((3) All records must be))~~ (b) Available at (~~(your)~~) the farm and available to department inspectors upon request.

(~~((4) All records must be))~~ (c) Retained at the farm for six months after the expiration of the special permit.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|----------------|--|
| WAC 16-170-040 | How long is my temporary special permit valid? |
|----------------|--|

**WSR 09-16-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-146—Filed July 28, 2009, 1:55 p.m., effective August 3, 2009]

Effective Date of Rule: August 3, 2009.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber 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 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: July 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100Y Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective August 3, 2009 until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2, 3 and 5 on Monday, Tuesday and Wednesday of each week.

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

**WSR 09-16-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-147—Filed July 28, 2009, 1:56 p.m., effective July 28, 2009, 1:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: The 2008-2009 state sea urchin harvest quota share amounts have been taken for the majority of the legal harvest areas. Closure of areas with remaining harvest quota shares prevents potential wastage of harvested sea urchin product, which is highly perishable, during the periods of warm weather experienced during summer months. 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: July 28, 2009.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300F Sea urchins. (09-75)

**WSR 09-16-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-148—Filed July 28, 2009, 2:02 p.m., effective August 1, 2009, 8:00 a.m.]

Effective Date of Rule: August 1, 2009, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600I; and amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule is necessary to avoid harvest of soft-shelled Dungeness crab. 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: July 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600I Coastal crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful for non-Indian commercial fisheries to fish for or possess Dungeness crab for commercial purposes, or place gear, from 8:00 am August 1, 2009, through September 15, 2009, in those waters west of straight lines drawn in sequence from south to north between the following coordinates:

| Land description | Coordinate |
|--------------------------------|---|
| (a) Washington – Oregon border | 46°15.00'N 124°10.00'W |
| (b) Seaview | 46°20.00'N 124°10.00'W |
| (c) Willapa Bay entrance | 46°40.00'N 124°10.00'W |
| (d) N. Willapa Bay Spits | 46°43.50'N 124°11.50'W |
| (e) Grayland | 46°50.00'N 124°12.30'W |
| (f) Grays Harbor | 46°54.70'N 124°16.00'W |
| (g) Ocean Shores | 47°00.00'N 124°16.00'W |
| (h) Moclips | 47°15.00'N 124°19.00'W |
| (i) Cape Elizabeth | 47°20.00'N 124°25.00'W |
| (j) Raft River | 47°27.00'N 124°28.60'W (follow TD 41880 to way-point # 11 N. Destruction Island) |
| (k) N. Destruction Island | 47°42.40'N 124°31.50'W |
| (l) Lapush | 47°55.00'N 124°46.00'W |
| (m) Carroll Island | 48°00.00'N 124°49.50'W |
| (n) N. Lake Ozette | 48°07.60'N 124°51.40'W |
| (o) Makah Bay | 48°20.00'N 124°50.00'W |
| (p) Cape Flattery | Point on land |

REPEALER

The following section of the Washington Administrative code is repealed effective September 16, 2009:

WAC 220-52-04600I Coastal crab fishery—Seasons and areas.

WSR 09-16-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-150—Filed July 29, 2009, 3:55 p.m., effective August 5, 2009]

Effective Date of Rule: August 5, 2009.

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 and 77.04.020.

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

Reasons for this Finding: The 2009 return of sockeye will be sufficient to provide for the Lake Wenatchee spawning escapement goal. This means that additional fish will be present to provide for sport fishing opportunity. 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: July 29, 2009.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 232-28-619, effective August 5, 2009, one hour before official sunrise, until further notice, a person may fish for salmon in Lake Wenatchee. Daily limit two sockeye, minimum size 12 inches in length. Selective Gear Rules in effect

for all species, except fishing from a boat equipped with a motor allowed. Release Bull trout, steelhead, Chinook salmon and sockeye with one or more holes punched in the tail. Night closure in effect.

WSR 09-16-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-149—Filed July 29, 2009, 4:00 p.m., effective July 29, 2009, 4:00 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-88C-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A new law governing the harvest of Pacific sardines into the state went into effect July 26, 2009. Certain regulations pertaining to the coastal pilchard experimental fishery permit are no longer in effect. This emergency regulation is necessary for state enforcement of Pacific sardine harvest and delivery until permanent rules are adopted.

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: July 29, 2009.

Philip Anderson
 Director

NEW SECTION

WAC 220-88C-04000H Coastal pilchard fishery—Seasons and lawful catch. Notwithstanding the provisions of WAC 220-88C-040, effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or deliver into any Washington port, Pacific sardine (*Sardinops sagax*) or other coastal pelagic species taken

in violation of gear requirements and other rules published at Title 50, Part 660, Subpart I of the Code of Federal Regulations (CFR). These federal regulations govern commercial fishing for coastal pelagic species in the Exclusive Economic Zone off the coasts of Washington, Oregon, and California. Where the federal regulations refer to the fishery management area, that area is interpreted to include Washington state waters coterminous with the Exclusive Economic Zone. Updates to the federal regulations are published in the Federal Register. Discrepancies or errors between the CFR and Federal Register will be resolved in favor of the Federal Register. Chapter 220-44 WAC incorporates the CFR by reference and is based, in part, on the CFR. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or from the U.S. Government Printing Office's GPO Access website (www.gpoaccess.gov). State regulations that are more restrictive than the federal regulations will prevail.

(2) Violation of gear, harvest, or landing requirements under this section is punishable pursuant to RCW 77.15.520.

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

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

WSR 09-16-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-151—Filed July 29, 2009, 4:02 p.m., effective July 29, 2009, 4:02 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule opens the beam trawl fishery season in Catch Area 20A and the pot fishery season in Shrimp Management Area 1B, and closes the pot fishery season in Shrimp Management Area 1A and Catch Area 23A-E because the spot shrimp quotas there have been harvested. 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: July 29, 2009.

Philip Anderson
Director

NEW SECTION

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

(1) Shrimp pot gear:

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

(i) All waters of Catch Areas 26B-1, 26C and the Discovery Bay Shrimp District are closed.

(ii) Effective immediately, until further notice, all waters of Shrimp Management Areas 1C, 2E, 2W and Catch Area 23B are closed to the harvest of spot shrimp.

(iii) Effective 11:59 p.m. August 2, 2009, until further notice, all waters of Shrimp Management Area 1A are closed to the harvest of all shrimp species, all waters of Catch Area 23A-E are closed to the harvest of spot shrimp, and all waters of Shrimp Management Area 1B are open to the harvest of all shrimp species.

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

(c) Effective 11:59 p.m. August 2, 2009, until further notice, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds per week in Shrimp Management Area 1B.

(d) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in Catch Area 23A-E. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish

Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

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

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

(2) Shrimp beam trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open immediately until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is open immediately until further notice.

(d) Effective 7:00 a.m. August 1, 2009, until further notice, all waters of Catch Area 20A are open.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100S Puget Sound shrimp pot and
 beam trawl fishery—Sea-
 son. (09-144)

WSR 09-16-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-152—Filed July 30, 2009, 3:44 p.m., effective August 4, 2009, 7:00 p.m.]

Effective Date of Rule: August 4, 2009, 7:00 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 (ESA). 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 220-33-01000H; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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 mainstem and select area fall commercial seasons. The seasons are consistent with the 2008-2017 interim management agreement, the 2009 non-Indian salmon allocation agreement and the 2006-2009 sturgeon accord. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 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 ESA. 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 ESA, 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. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 30, 2009.

Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River

a. SEASON: 7:00 p.m. August 4 to 7:00 a.m. August 5, 2009

7:00 p.m. August 6 to 7:00 a.m. August 7, 2009

7:00 p.m. August 9 to 7:00 a.m. August 10, 2009

8:00 p.m. August 18 to 6:00 a.m. August 19, 2009

8:00 p.m. August 20 to 6:00 a.m. August 21, 2009

8:00 p.m. August 23 to 6:00 a.m. August 24, 2009

8:00 p.m. August 25 to 6:00 a.m. August 26, 2009

8:00 p.m. August 27 to 6:00 a.m. August 28, 2009

b. AREA: August 4-10: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5)

August 18-24: SMCRA 1C, 1D, 1E (Zones 3-5)

Upstream of the Kalama River. (Upstream of a line projected from the Goble Ramp on the Oregon Shore to the downstream end of the Kalama Chemical dock on the Washington shore).

August 25-28: SMCRA 1D, 1E (Zones 4-5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays River, Elochomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers,

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of nine (9) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: 7 p.m. August 25 to 7 a.m. August 26, 2009
7 p.m. August 26 to 7 a.m. August 27, 2009

And Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009.

Open hours are 7 PM - 7 AM from August 25 through September 18 and 6 PM - 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. Weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, Thursday, and Friday nights from August 31 through October 31, 2009.

Open 7 PM - 9 AM from August 31 through September 19 and 4 PM - 9 AM thereafter

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

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

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

5. **Quick Report:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This Quick report requirement applies to all seasons described above (Columbia River and Select Areas).

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

REPEALER

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

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

WSR 09-16-075

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 09-08—Filed July 31, 2009, 8:54 a.m., effective July 31, 2009, 8:54 a.m.]

Effective Date of Rule: Immediately.

Purpose: This fifth emergency rule establishes a partial withdrawal of groundwater within a portion of WRIA 39 in Kittitas County, Washington. The partial withdrawal and restrictions are designed to prevent new uses of water that negatively affect flows in the Yakima River and its tributaries. The withdrawal allows for continued development using the groundwater exemption or new permits when the new consumptive use is mitigated by one or more pre-1905 water rights held by ecology in the trust water right program of equal or greater consumptive quantity. Withdrawals of groundwater for structures for which building permit applications were vested prior to July 16, 2009, shall be allowed but shall be subject to curtailment. This emergency rule supercedes the one filed on July 16, 2009, WSR 09-15-107.

Statutory Authority for Adoption: RCW 90.54.050.

Other Authority: Chapter 43.27A RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Yakima Basin is one of the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, and during 2004 when USBR prorated May 10, 1905, water rights. The town of Roslyn's municipal supply and another 133 single domestic, group domestic, and municipal water systems throughout the basin are subject to curtailment when USBR prorates the May 10, 1905, water rights. Water supply in the Yakima Basin is limited and over-appropriated. Western portions of Kittitas County are experiencing rapid growth and this growth is being largely served by exempt wells. Exempt wells in this area may negatively affect the flow of the Yakima River or its tributaries.

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 10, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 31, 2009.

Jay J. Manning

Director

by Polly Zehm

Chapter 173-539A WAC

UPPER KITTITAS EMERGENCY GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. The purpose of this rule is to withdraw from appropriation all unappropriated ground water within upper Kittitas County during the pendency of a ground water study. New ground water withdrawals will be limited to those that are water budget neutral, as defined in this rule.

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water manage-

ment. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County. Ecology later invoked the dispute resolution process under the MOA. The MOA was terminated by ecology on July 1, 2009.

NEW SECTION

WAC 173-539A-030 Definitions. The definitions provided below are intended to be used only for this chapter.

"Consumptive use" of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.

"Ecology" means the department of ecology.

"Exemption" or **"ground water exemption"** means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Water budget neutral project" means an appropriation or project where withdrawals of ground water of the state are proposed in exchange for discharge of water from other water rights that are placed into the trust water right program where such discharge is at least equivalent to the amount of consumptive use.

NEW SECTION

WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. (1) Beginning on the effective date of this rule, all public ground waters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of ground water shall be allowed, including those exempt from permitting, except:

(a) Uses of ground water for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral pursuant to WAC 173-539A-050. Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety

percent of outdoor use is consumptively used; twenty percent of domestic in-house use that is treated through a wastewater treatment plant which discharges to surface water is consumptively used.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit, which may not in any case exceed three years from the date the permit application vested. The exception does not reflect ecology's view on when the priority date for an exempt water right commences and is established only to avoid potential hardship. All new withdrawals may be subject to future curtailment due to conflicts with senior water rights, and all users without senior trust water rights are advised to obtain mitigation through senior trust water rights to avoid such curtailment.

NEW SECTION

WAC 173-539A-050 Water budget neutral projects.

(1) Persons proposing to use ground water shall apply to ecology for a permit to appropriate public ground water or, if seeking to use the ground water exemption, shall submit to ecology a request for determination that the proposed exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public ground water or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:

(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use associated with the proposed new use of ground water;

(b) A site map;

(c) The area to be irrigated (in acres);

(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in WAC 173-539A-040 (1)(b);

(e) A property covenant that restricts or prohibits trees or shrubs over the septic drain field; and

(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.

(3) Applications for public ground water or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(4) Applications to appropriate public ground water or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.

(5) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.

(6) Unless accepted by WAC 173-539A-040 (1)(a), no new exempt withdrawal under RCW 90.44.050 may be commenced unless ecology has approved a request for determination that the proposed exempt use would be water budget neutral. Such a request must comply with subsections (2) and (3) of this section.

NEW SECTION

WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights. (1) RCW 90.38.040 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new surface water right, a request for a determination of water budget neutrality, or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

NEW SECTION

WAC 173-569A-070 Measuring and reporting water use. (1) For all uses of the ground water exemption for residential purposes within upper Kittitas County that commence after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with such requirements as prescribed in WAC 173-173-100.

(2) Metering data must be collected and reported within thirty days of the end of the recording period to ecology. The following table shows the recording periods and the due dates for each metering report:

| Recording Period | Report Due No Later Than: |
|----------------------------|---------------------------|
| October 1 - March 31 | April 30 |
| April 1 - June 30 | July 30 |
| July 1 - July 31 | August 30 |
| August 1 - August 31 | September 30 |
| September 1 - September 30 | October 30 |

NEW SECTION

WAC 173-539A-080 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

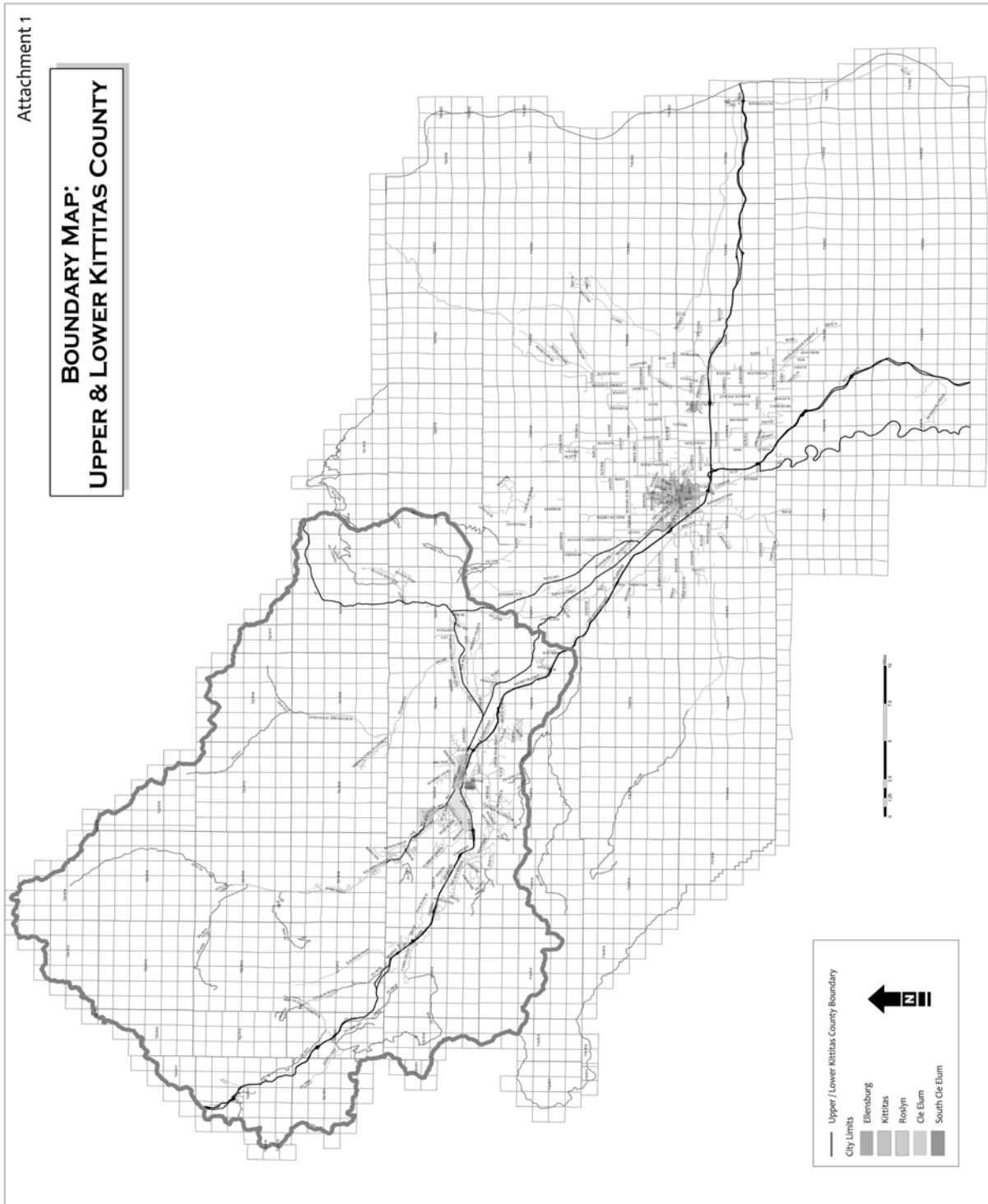
(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

NEW SECTION

WAC 173-539A-090 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.



WSR 09-16-078**EMERGENCY RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed July 31, 2009, 12:11 p.m., effective August 1, 2009]

Effective Date of Rule: August 1, 2009.

Purpose: These amendments are necessary to meet the legislative requirements of sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 for durable medical equipment. Specifically, the department is eliminating the coverage for bathroom equipment, disinfectant sprays, surgical stockings, custom vascular supports, graduated compression stockings, and blood monitoring equipment; and changing the limits on nonsterile and sterile gloves, incontinence supplies, and test strips.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-543-2300; and amending WAC 388-543-1150, 388-543-1300, and 388-543-1600.

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

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislatively-mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011 by August 1, 2009. A CR-101 was filed on February 12, 2009, as WSR 09-05-057.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: July 14, 2009.

Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-17 issue of the Register.

WSR 09-16-081**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-153—Filed July 31, 2009, 12:34 p.m., effective August 6, 2009, 12:01 p.m.]

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

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S and 232-28-61900U; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Surplus pink salmon are available for harvest in the Skagit River. The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: July 31, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—2009 North of Falcon. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 p.m. August 6, 2009, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Baker River (Skagit County): Mouth to Highway 20 Bridge: Salmon: closed. From Highway 20 Bridge to Concrete to fish barrier dam: Closed waters.

(2) Hoh River (Jefferson County), Outside of Olympic National Park:

(a) From Olympic National Park upstream to DNR Oxbow Campground Boat Launch, selective gear rules not in effect.

(b) Selective gear rules until further notice, from DNR Oxbow Campground Boat Launch to Willoughby Creek.

(c) Selective gear rules effective immediately until further notice, from Willoughby Creek to Olympic National Park Boundary below the mouth of South Fork.

(3) Nisqually River (Pierce County), from mouth to Military Tank Crossing Bridge: Salmon: Open immediately until further notice. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of the adult salmon, only 2 may be any combination of pink, chum and coho. Release wild adult Chinook.

(4) Naselle River (Pacific/Wahkiakum counties), from Highway 101 Bridge upstream including all forks: Salmon: Open immediately until further notice, from Highway 101 Bridge to Highway 4 Bridge. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of these 3 adult fish, no more than 2 may be adult Chinook and only 1 may be a wild adult coho. Release chum salmon.

(5) Nemah River, North, Middle, and South: Salmon: Open until further notice on Middle Nemah from mouth to DNR Bridge, and on South Nemah from mouth to confluence with Middle Nemah. Middle and South Nemah: Daily limit 6 fish, of which no more than 2 may be adult salmon; and of the two adult fish, no more than one may be a wild adult coho. Release chum.

(6) Samish River (Whatcom County), Salmon: Open until further notice from mouth to Thomas Road Bridge. Daily limit two salmon. Release wild coho.

(7) Skagit River (Skagit/Whatcom counties):

(a) From mouth to Memorial Highway Bridge (Highway 536 at Mt. Vernon): Salmon: Open 12:01 p.m. August 6 through August 9. Daily limit 2 salmon, only one of which may be an adult Chinook. Release chum, coho and sockeye. Night closure.

(b) From Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to Gilligan Creek: Salmon: Open 12:01 p.m. August 6 through August 9. Daily limit 2 salmon, only one of which may be an adult Chinook. Release chum, coho and sockeye. Night closure.

(c) From the Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport: Closed until further notice between a line 200 feet above the east bank of the Baker River to a line 200 feet below the west bank of the Baker River. Anti-snagging rule and night closure until further notice. Salmon closed until further notice.

(8) Willapa River (Pacific County): Mouth to Highway 6 Bridge: Salmon: Open until further notice from mouth to Highway 6 Bridge approximately 2 miles below mouth of Trap Creek. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of the adult salmon, not more than one may be a wild adult coho and not more than two may be adult Chinook. Release chum.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. August 6, 2009:

WAC 232-28-61900S Exceptions to statewide rules—2009 North of Falcon. (09-102)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 10, 2009:

WAC 232-28-61900U Exceptions to statewide rules—2009 North of Falcon.

**WSR 09-16-082
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-157—Filed July 31, 2009, 1:14 p.m., effective August 1, 2009, 12:01 a.m.]

Effective Date of Rule: August 1, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000T; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Enough chinook remain in the overall ocean chinook quota to liberalize the chinook daily limit to two per 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 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: July 31, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000U Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. August 1, 2009, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 1:** Open until further notice: daily limit 2 salmon, except release wild coho.

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

(a) Area 2:

(i) Open until further notice: daily limit 2 salmon, plus 1 additional pink, except release wild coho.

(b) Area 2-1:

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

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

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

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

(3) **Area 3:**

(a) Open until further notice: daily limit 2 salmon, plus 2 additional pink, except release wild coho.

(4) **Area 4:**

(a) Open until further notice: daily limit 2 salmon, plus 2 additional pink, except release wild coho.

(i) Beginning August 1, release Chinook east of the Bonilla-Tatoosh Line.

(ii) Beginning August 1, release chum.

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

REPEALER

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

WAC 232-28-62000T Coastal salmon seasons—
2009 North of Falcon. (09-69)

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

**WSR 09-16-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-156—Filed July 31, 2009, 3:36 p.m., effective August 3, 2009, 6:00 a.m.]

Effective Date of Rule: August 3, 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 (ESA). 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 220-32-05700B; and amending WAC 220-32-057.

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: Adopts a sturgeon set line commercial treaty fishery in The Dalles Pool only (SMCRA 1G). Allow sales only of sturgeon, (including platform and hook-and-line) caught in SMCRA 1G. Sturgeon remain available for harvest based on the 2009 sturgeon guidelines. Conforms state rules to tribal rules. Consistent with compact action of July 31, 2009. There is insufficient time to promulgate permanent regulations.

New regulations for 2009 include fisheries that are described in the MOA between Washington state and the Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines.

Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 31, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05700B Columbia River sturgeon seasons above Bonneville Dam Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon 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 Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

1. **Open period:** 6:00 a.m. August 3 through 6:00 p.m. August 15, 2009.

2. **Area:** 1G (The Dalles Pool only).

3. **Gear:** Setlines. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.

4. **Allowable Sales:** Only sturgeon caught in SMCRA 1G between 43 and 54 inches in fork length may be sold. Sturgeon within the size limits stated above and caught in The Dalles pool (SMCRA 1G) platform and hook and line fishery may be sold during the open periods of the set line fishery.

5. **Sanctuaries:** Standard sanctuaries applicable to these gear types.

6. **Additional Regulations:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

7. **Miscellaneous:** It is unlawful to sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter RCW 75.28, or to sell or barter sturgeon eggs at retail. It is unlawful to deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. August 15, 2009:

WAC 220-32-05700B Columbia River sturgeon seasons above Bonneville. (07-156)

**WSR 09-16-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-158—Filed July 31, 2009, 3:37 p.m., effective July 31, 2009, 3:37 p.m.]

Effective Date of Rule: Immediately.

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 (ESA). 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 220-32-05100S; 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: Allows the sales of sturgeon caught with subsistence gear in The Dalles Pool during the open commercial set-line fishing periods to also be sold. Removes the twenty-four hour quick reporting requirement in order to be consistent with sturgeon set-line fishery. Sales of fish during open periods which allow only subsistence

gear to be used are very minimal, reducing the need for quick reporting. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 26, July 13, and July 31, 2009. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2009 include fisheries that are described in the MOA between Washington state and the Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA.

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

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

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

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

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

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

Date Adopted: July 31, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, except as provided in the following subsections; and the same prohibitions apply in the Wind River, White Salmon River, and Klickitat River, except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

- a) SEASON: Immediately until further notice.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

2. Columbia River Tributaries above Bonneville Dam

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

- b) AREA: White Salmon, and Klickitat and Wind rivers.

- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Mainstem Columbia River below Bonneville Dam

- a) SEASON: Immediately until further notice, and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam" and only for enrolled Yakama Nation members in areas that have either commercial gillnet openings or allow platform/hook and line gear in Zone 6 (SMCRA 1F, 1G, 1H).

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

- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

4. SANCTUARIES: Standard river mouth and dam sanctuaries applicable to these gear types, except the Spring Creek Hatchery sanctuary not in effect.

5. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, carp, yellow perch, catfish and bass. Sturgeon may not be sold, except when caught in The Dalles Pool (SMCA 1G) during times of open setline seasons and

are between 43-54 inches in fork length. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale. Sturgeon caught below Bonneville Dam may NOT be retained and may NOT be sold.

6. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100S Columbia River salmon seasons above Bonneville Dam. (09-136)

**WSR 09-16-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-160—Filed August 4, 2009, 1:23 p.m., effective August 7, 2009, 12:01 a.m.]

Effective Date of Rule: August 7, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100F and 232-28-62100G; and amending WAC 232-28-621.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Wild fish mortalities have exceeded preseason expectations in Catch Record Card Areas 5 and 6. 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 2.

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

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

Date Adopted: August 4, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62100G Puget Sound salmon seasons. Notwithstanding the provisions of WAC 232-28-621, and WAC 220-56-195, effective 12:01 a.m. August 7, 2009 until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 5: - Open immediately until further notice, daily limit 2 salmon, plus 2 additional pink, except release chum, Chinook, and wild coho.

(2) Area 6: - Open immediately until further notice, daily limit 2 salmon, plus 2 additional pink, except release chum, Chinook, and wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 7, 2009:

WAC 232-28-62100F Puget Sound salmon seasons—2009 North of Falcon. (09-69)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 16, 2009:

WAC 232-28-62100G Puget Sound salmon seasons.

**WSR 09-16-123
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-159—Filed August 4, 2009, 4:15 p.m., effective August 7, 2009]

Effective Date of Rule: August 7, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sockeye salmon returns above Zosel Dam are predicted to be in excess of needs for wild fish escapement to the spawning grounds. The population is not listed under the Endangered Species Act. 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: August 4, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Lake Osoyoos. Notwithstanding the provisions of WAC 232-28-619, effective August 7 through August 30, 2009, a person may fish for salmon in waters of Lake Osoyoos 300 yards south of the 49th parallel (US-Canadian border, which is marked with large fluorescent orange signs). Daily limit four sockeye, minimum size 12 inches in length. Release all Chinook salmon and all sockeye with colored anchor (floy) tag attached.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 31, 2009:

WAC 232-28-61900V Exceptions to statewide
rules—Lake Osoyoos.