

**WSR 11-08-001
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 24, 2011, 10:02 a.m., effective April 1, 2011]

Effective Date of Rule: April 1, 2011.

Purpose: Effective April 1, 2011, the department will decrease the daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Under the Governor's Executive Order 10-04, the aging and disability services administration (ADSA) must reduce its expenditures for the current fiscal year ending June 30, 2011, by 6.287 percent. To help achieve this level of reduction, ADSA anticipates the possibility of reducing its medicaid payment rates to licensed boarding homes.

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

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

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: Under the Governor's Executive Order 10-04, ADSA must reduce its expenditures for the current fiscal year ending June 30, 2011, by 6.287 percent.

To help achieve this level of reduction, ADSA anticipates the possibility of reducing its medicaid payment rates to licensed boarding homes.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.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: March 23, 2011.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-21-035, filed 10/12/10, effective 10/29/10)

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

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$((66.65)) <u>61.98</u>	\$((72.07)) <u>67.40</u>	\$((47.19)) <u>43.89</u>	\$((47.19)) <u>43.89</u>	\$46.39
A Med	\$((72.15)) <u>67.10</u>	\$((77.57)) <u>72.52</u>	\$((53.52)) <u>49.77</u>	\$((53.52)) <u>49.77</u>	\$52.64
A High	\$((80.94)) <u>75.27</u>	\$((86.36)) <u>80.69</u>	\$((58.76)) <u>54.65</u>	\$((58.76)) <u>54.65</u>	\$58.90
B Low	\$((66.65)) <u>61.98</u>	\$((72.07)) <u>67.40</u>	\$((47.19)) <u>43.89</u>	\$((47.19)) <u>43.89</u>	\$46.62
B Med	\$((74.35)) <u>69.15</u>	\$((79.77)) <u>74.57</u>	\$((59.85)) <u>55.66</u>	\$((59.85)) <u>55.66</u>	\$59.19
B Med-High	\$((84.18)) <u>78.29</u>	\$((89.60)) <u>83.71</u>	\$((63.63)) <u>59.18</u>	\$((63.63)) <u>59.18</u>	\$63.42
B High	\$((88.64)) <u>82.41</u>	\$((94.03)) <u>87.83</u>	\$((72.71)) <u>67.62</u>	\$((72.71)) <u>67.62</u>	\$72.51

C Low	\$((72.15)) <u>67.10</u>	\$((77.57)) <u>72.52</u>	\$((53.52)) <u>49.77</u>	\$((53.52)) <u>49.77</u>	\$52.64
C Med	\$((80.94)) <u>75.27</u>	\$((86.36)) <u>80.69</u>	\$((67.13)) <u>62.43</u>	\$((67.13)) <u>62.43</u>	\$67.22
C Med-High	\$((100.71)) <u>93.66</u>	\$((106.13)) <u>99.08</u>	\$((89.42)) <u>83.16</u>	\$((89.42)) <u>83.16</u>	\$88.06
C High	\$((101.71)) <u>94.59</u>	\$((107.13)) <u>100.01</u>	\$((90.27)) <u>83.95</u>	\$((90.27)) <u>83.95</u>	\$89.29
D Low	\$((74.35)) <u>69.15</u>	\$((79.77)) <u>74.57</u>	\$((72.27)) <u>67.21</u>	\$((72.27)) <u>67.21</u>	\$68.52
D Med	\$((82.59)) <u>76.81</u>	\$((88.01)) <u>82.23</u>	\$((83.70)) <u>77.84</u>	\$((83.70)) <u>77.84</u>	\$83.87
D Med-High	\$((106.74)) <u>99.27</u>	\$((112.16)) <u>104.69</u>	\$((106.39)) <u>98.94</u>	\$((106.39)) <u>98.94</u>	\$100.92
D High	\$((115.01)) <u>106.96</u>	\$((120.43)) <u>112.38</u>	\$((115.01)) <u>106.96</u>	\$((115.01)) <u>106.96</u>	\$114.90
E Med	\$((138.95)) <u>129.22</u>	\$((144.37)) <u>134.64</u>	\$((138.95)) <u>129.22</u>	\$((138.95)) <u>129.22</u>	\$138.84
E High	\$((162.89)) <u>151.49</u>	\$((168.31)) <u>156.91</u>	\$((162.89)) <u>151.49</u>	\$((162.89)) <u>151.49</u>	\$162.79

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$((61.15)) <u>56.87</u>	\$((66.07)) <u>61.79</u>	\$((47.19)) <u>43.89</u>	\$((47.19)) <u>43.89</u>	\$46.39
A Med	\$((64.46)) <u>59.95</u>	\$((69.38)) <u>64.87</u>	\$((51.41)) <u>47.81</u>	\$((51.41)) <u>47.81</u>	\$50.55
A High	\$((78.74)) <u>73.23</u>	\$((83.66)) <u>78.15</u>	\$((56.04)) <u>52.12</u>	\$((56.04)) <u>52.12</u>	\$55.76
B Low	\$((61.15)) <u>56.87</u>	\$((66.07)) <u>61.79</u>	\$((47.19)) <u>43.89</u>	\$((47.19)) <u>43.89</u>	\$46.62
B Med	\$((69.94)) <u>65.04</u>	\$((74.86)) <u>69.96</u>	\$((56.69)) <u>52.72</u>	\$((56.69)) <u>52.72</u>	\$56.04
B Med-High	\$((79.20)) <u>73.66</u>	\$((84.12)) <u>78.58</u>	\$((60.27)) <u>56.05</u>	\$((60.27)) <u>56.05</u>	\$60.10
B High	\$((86.42)) <u>80.37</u>	\$((91.34)) <u>85.29</u>	\$((70.66)) <u>65.71</u>	\$((70.66)) <u>65.71</u>	\$70.46
C Low	\$((64.46)) <u>59.95</u>	\$((69.38)) <u>64.87</u>	\$((51.62)) <u>48.01</u>	\$((51.62)) <u>48.01</u>	\$50.93
C Med	\$((78.74)) <u>73.23</u>	\$((83.66)) <u>78.15</u>	\$((66.27)) <u>61.63</u>	\$((66.27)) <u>61.63</u>	\$65.58
C Med-High	\$((97.40)) <u>90.58</u>	\$((102.32)) <u>95.50</u>	\$((83.09)) <u>77.27</u>	\$((83.09)) <u>77.27</u>	\$81.82
C High	\$((98.37)) <u>91.48</u>	\$((103.29)) <u>96.40</u>	\$((88.37)) <u>82.18</u>	\$((88.37)) <u>82.18</u>	\$86.81

D Low	\$((69.94)) <u>65.04</u>	\$((74.86)) <u>69.96</u>	\$((71.28)) <u>66.29</u>	\$((71.28)) <u>66.29</u>	\$67.01
D Med	\$((80.34)) <u>74.72</u>	\$((85.26)) <u>79.64</u>	\$((82.03)) <u>76.29</u>	\$((82.03)) <u>76.29</u>	\$81.61
D Med-High	\$((103.24)) <u>96.01</u>	\$((108.16)) <u>100.93</u>	\$((103.76)) <u>96.50</u>	\$((103.76)) <u>96.50</u>	\$97.84
D High	\$((111.85)) <u>104.02</u>	\$((116.77)) <u>108.94</u>	\$((111.85)) <u>104.02</u>	\$((111.85)) <u>104.02</u>	\$111.16
E Med	\$((134.64)) <u>125.22</u>	\$((139.56)) <u>130.14</u>	\$((134.64)) <u>125.22</u>	\$((134.64)) <u>125.22</u>	\$133.95
E High	\$((157.43)) <u>146.41</u>	\$((162.35)) <u>151.33</u>	\$((157.43)) <u>146.41</u>	\$((157.43)) <u>146.41</u>	\$156.74

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

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$((60.07)) <u>55.87</u>	\$((65.31)) <u>61.11</u>	\$((47.19)) <u>43.89</u>	\$((47.19)) <u>43.89</u>	\$46.39
A Med	\$((64.46)) <u>59.95</u>	\$((69.70)) <u>65.19</u>	\$((50.36)) <u>46.83</u>	\$((50.36)) <u>46.83</u>	\$49.52
A High	\$((78.74)) <u>73.23</u>	\$((83.98)) <u>78.47</u>	\$((55.14)) <u>51.28</u>	\$((55.14)) <u>51.28</u>	\$54.73
B Low	\$((60.07)) <u>55.87</u>	\$((65.31)) <u>61.11</u>	\$((47.19)) <u>43.89</u>	\$((47.19)) <u>43.89</u>	\$46.62
B Med	\$((69.94)) <u>65.04</u>	\$((75.18)) <u>70.28</u>	\$((55.64)) <u>51.75</u>	\$((55.64)) <u>51.75</u>	\$55.00
B Med-High	\$((79.20)) <u>73.66</u>	\$((84.44)) <u>78.90</u>	\$((59.14)) <u>55.00</u>	\$((59.14)) <u>55.00</u>	\$58.92
B High	\$((86.42)) <u>80.37</u>	\$((91.66)) <u>85.61</u>	\$((66.84)) <u>62.16</u>	\$((66.84)) <u>62.16</u>	\$66.64
C Low	\$((64.46)) <u>59.95</u>	\$((69.70)) <u>65.19</u>	\$((50.36)) <u>46.83</u>	\$((50.36)) <u>46.83</u>	\$49.52
C Med	\$((78.74)) <u>73.23</u>	\$((83.98)) <u>78.47</u>	\$((62.65)) <u>58.26</u>	\$((62.65)) <u>58.26</u>	\$63.07
C Med-High	\$((97.40)) <u>90.58</u>	\$((102.64)) <u>95.82</u>	\$((79.92)) <u>74.33</u>	\$((79.92)) <u>74.33</u>	\$78.70
C High	\$((98.37)) <u>91.48</u>	\$((103.61)) <u>96.72</u>	\$((83.54)) <u>77.69</u>	\$((83.54)) <u>77.69</u>	\$82.10
D Low	\$((69.94)) <u>65.04</u>	\$((75.18)) <u>70.28</u>	\$((67.39)) <u>62.67</u>	\$((67.39)) <u>62.67</u>	\$63.37
D Med	\$((80.34)) <u>74.72</u>	\$((85.58)) <u>79.96</u>	\$((77.55)) <u>72.12</u>	\$((77.55)) <u>72.12</u>	\$77.17
D Med-High	\$((103.24)) <u>96.01</u>	\$((108.48)) <u>101.25</u>	\$((98.08)) <u>91.21</u>	\$((98.08)) <u>91.21</u>	\$92.52

D High	\$((105.73)) <u>98.33</u>	\$((110.97)) <u>103.57</u>	\$((105.73)) <u>98.33</u>	\$((105.73)) <u>98.33</u>	\$105.10
E Med	\$((127.27)) <u>118.36</u>	\$((132.51)) <u>123.60</u>	\$((127.27)) <u>118.36</u>	\$((127.27)) <u>118.36</u>	\$126.64
E High	\$((148.81)) <u>138.39</u>	\$((154.05)) <u>143.63</u>	\$((148.81)) <u>138.39</u>	\$((148.81)) <u>138.39</u>	\$148.19

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

**WSR 11-08-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

Date Adopted: March 25, 2011.

Philip Anderson
Director

[Order 11-39—Filed March 25, 2011, 1:28 p.m., effective April 7, 2011, 12:01 a.m.]

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Kliline Pond (Clark Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. on April 7, 2011 through 11:59 p.m. on April 9, 2011, it is unlawful to fish in those waters of Kliline Pond, except as provided in this section:

Effective Date of Rule: April 7, 2011, 12:01 a.m.
Purpose: Amend personal use fishing rules.
Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900C; and amending WAC 232-28-619.
Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

(a) Open to fishing 8:00 a.m. to 3:00 p.m. on April 9, 2011, in the netted area, to juvenile anglers participating in the Kliline Kids Fishing Event.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 10, 2011:

Reasons for this Finding: This regulation is necessary to ensure a safe and successful fishing kids event. Trout will be stocked two days prior to the event to acclimate them. Closing the pond prior to the event will ensure there are fish for participants to catch. On the day of the event, preregistered kids will be allowed to fish in these netted areas. The reason for keeping the pond closed after the event is to ensure the safety of the public as well as the event participants while the event is shutting down and equipment and nets are being removed. There is insufficient time to adopt permanent rules.

WAC 232-28-61900C Exceptions to statewide rules—Kliline Pond (Clark Co.)

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.

**WSR 11-08-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-40—Filed March 25, 2011, 1:31 p.m., effective April 1, 2011, 12:01 a.m.]

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.

Effective Date of Rule: April 1, 2011, 12:01 a.m.
Purpose: Amend personal use fishing rules.
Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900W.
Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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.

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 steelhead sport fishery that opened by emergency rule on September 8, 2010, will close effective April 1, 2011. This action is necessary to protect spawning steelhead listed for protection under the federal 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 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: March 25, 2011.

Philip Anderson
Director

fish and wildlife, will implant acoustic tags into selected game fish species to learn more about movement patterns within the Priest Rapids Pool. Game fish must be anesthetized in order to implant acoustic tags. The Food and Drug Administration stipulates that anesthetized fish must have a twenty-one day withdrawal period before fish can be consumed. 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: March 25, 2011.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective April 1, 2011:

WAC 232-28-61900W	Exceptions to statewide rules—Columbia, Entiat, Methow, Okanogan, Similkameen, Wenatchee and Icicle rivers. (11-20)
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WSR 11-08-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-41—Filed March 25, 2011, 1:33 p.m., effective April 1, 2011]

Effective Date of Rule: April 1, 2011.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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: Grant County Public Utility District, with assistance from the Washington department of

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective April 1 through May 31, 2011, in waters of the Columbia River from Priest Rapids Dam to Wanapum Dam, it is unlawful to retain smallmouth bass, largemouth bass, walleye, channel catfish, and northern pike-minnow that have circular (hole) punches in their dorsal fin.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2011:

WAC 232-28-61900I	Exceptions to statewide rules—Columbia River.
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WSR 11-08-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-45—Filed March 29, 2011, 3:18 p.m., effective March 29, 2011, 7:30 p.m.]

Effective Date of Rule: March 29, 2011, 7:30 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 220-33-01000S; 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.

Reasons for this Finding: Sets the first commercial non-Indian spring chinook fishery for 2011. Continues the winter and spring select area commercial seasons. Impacts to ESA-listed salmon are expected to be within ESA limits. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 8 and March 28, 2011. 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 wild-

life 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: March 29, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000T Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) Area: SMCRA 1A, 1B, 1C, and 1D only upstream to Kelley Point.

b) Dates: 7:30 p.m. to 11:30 p.m. Tuesday, March 29, 2011.

c) Allowable Sales: Adipose fin-clipped salmon, white sturgeon (43-54 inch fork length), and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin.

d) Sanctuaries: Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers, as applicable.

e) Gear: Drift gill nets only; 4-1/4 inch maximum mesh. Multifilament web required for the 4-1/4 inch.

Net length not to exceed **150 fathoms**, except tangle nets constructed with an optional steelhead excluding device (large mesh panel, weedlines, or droppers) hung between the corkline and the 4 1/4" maximum mesh size tangle net may extend to a maximum length of **175 fathoms**. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-

type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers, must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks required under miscellaneous regulations. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by 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.

f) Miscellaneous Regulations:

Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes.

Red corks are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required

Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or

other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

Observer program: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

Live Capture workshop: Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

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

2. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge. Reduced area extends from the Oneida Road boat ramp upstream to the Highway 4 Bridge.

b) Dates: Winter Season: Open hours are: 7:00 p.m. Sundays to 7:00 a.m. Mondays immediately through April 4, 2011, in reduced fishing area.

Spring Season: Open hours are: 7:00 p.m. Sundays to 7:00 a.m. Mondays, and 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays from April 17 through June 9, 2011.

c) Gear: Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010(17)). Nets (or parts of nets) not specifically authorized for use in these areas may be onboard a 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. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to

the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff. During the winter season, fishers are required to call 360-795-0319 for information on the place and time of sampling. In the spring season, a sampling station will be established approximately 2 miles downstream of the Highway 4 Bridge near Stephan's dock.

f) 24-hour quick reporting in effect for Washington buyers.

3. Tongue Point/South Channel

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island, (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 25 through June 10, 2011.

c) Gear: Gillnets. In the Tongue Point fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: During April 25 through May 20, 2011, transportation or possession of fish outside the fishing area is unlawful (except while in transit to ODFW sampling stations) until ODFW staff has biologically sampled individual catches. A sampling station will be established near the Tongue Point area. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 23,

fishers are required to call 503-428-0518 and leave a message including name, catch, and where and when fish will be sold.

f) 24-hour quick reporting in effect for Washington buyers.

4. Blind Slough/Knappa Slough Select Area

a) Area: Only the Blind Slough area is open during winter season, and both Blind Slough and Knappa Slough areas are open during spring season. From May 2 through June 10, 2011, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (Fall season boundary).

b) Dates: Winter Season: Open hours are: 7:00 p.m. Sundays to 7:00 a.m. Mondays immediately through April 4, 2011.

Spring Season: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays, from April 18 through June 10, 2011.

c) Gear: Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d) Allowable sales: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers. Permanent transportation rules in effect.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:30 p.m. March 29, 2011:

WAC 220-33-01000S Columbia River seasons below Bonneville. (11-23)

WSR 11-08-020
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 31, 2011, 12:03 p.m., effective March 31, 2011, 12:03 p.m.]

Effective Date of Rule: Immediately.

Purpose: The DSHS division of child support (DCS) is adopting these emergency rules to implement changes in the federal regulations concerning establishing and enforcing

intergovernmental child support obligations. The federal rules being implemented in this rule-making order are 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

DCS anticipates that we will be unable to complete the regular adoption process by the effective date. Therefore, DCS is adopting emergency rules at this time, but contemporaneously with the filing of this CR-103E, DCS is filing a CR-101, preproposal statement of inquiry, to start the regular rule-making process. DCS will adopt final rules as soon as possible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS (~~deny~~) keep a support enforcement case open despite a request to close ((a support enforcement case)) it?, 388-14A-2090 Who (~~is mailed~~) receives notice ((of DCS' intent to close)) when DCS closes a case?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2160 (~~If my information is confidential, can~~) On what authority does DCS ((report me to)) share my confidential information with a credit bureau?, 388-14A-3130 What happens if a (~~parent~~) party makes a timely request for hearing on a support establishment notice?, 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-7100 The division of child support may register an order from another state for enforcement or modification, 388-14A-7305 How (~~do I~~) does a party, IV-D agency or jurisdiction ask ((DCS to do)) for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties (~~of its~~) that a determination of the controlling order ((has been)) is going to be made? and 388-14A-7335 What happens if someone objects to (~~DCS' proposed~~) a notice of support debt and registration which contains a determination of the presumed controlling order?; and new sections WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? and 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country?

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310.

Other Authority: 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

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: 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 13, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 13, Repealed 0.

Date Adopted: March 25, 2011.

Katherine I. Vasquez
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 11-09 issue of the Register.

WSR 11-08-021

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed March 31, 2011, 12:23 p.m., effective April 1, 2011]

Effective Date of Rule: April 1, 2011.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is changing the benefit limit for adults, twenty-one years of age and older, for outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy). The new benefit limits apply to skilled therapy services through a medicare-certified home health agency as well as therapies provided by physical therapists, occupational therapists, and speech therapists in outpatient hospital clinics and free-standing therapy clinics.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-545-300, 388-545-500 and 388-545-700; and amending WAC 388-545-900 and 388-551-2110.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and 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: In the supplemental 2010 state budget bill, the legislature required the department to take steps to reduce expenditures, including the elimination of optional services, when the department estimates program expenditures will exceed legislative appropriations. Delaying the adoption of these changes in benefit limits to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 3.

Date Adopted: March 21, 2011.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy).

(1) The following health professionals may enroll with the department to provide outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy) within their scope of practice to eligible clients:

- (a) A licensed occupational therapist;
- (b) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (c) A licensed physical therapist or physiatrist;
- (d) A physical therapist assistant supervised by a licensed physical therapist;
- (e) A speech-language pathologist who has been granted a certificate of clinical competence by the American Speech, Hearing and Language Association; and
- (f) A speech-language pathologist who has completed the equivalent educational and work experience necessary for such a certificate.

(2) Clients in the following department programs are eligible to receive outpatient rehabilitation as described in this chapter:

- (a) Categorically needy program (CNP);
- (b) Categorically needy program - state children's health insurance program (CNP-SCHIP);

(c) Children's healthcare programs as defined in WAC 388-505-0210;

(d) Disability lifeline (formerly general assistance unemployable) (within Washington state or border areas only);

(e) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);

(f) Medically needy program (MNP) only when the client is either:

(i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis and treatment program (healthy kids program) as described in chapter 388-534 WAC; or

(ii) Receiving home health care services as described in chapter 388-551 WAC, subchapter II.

(3) Clients who are enrolled in a department-contracted managed care organization (MCO) must arrange for outpatient rehabilitation directly through his or her department-contracted MCO.

(4) The department pays for outpatient rehabilitation when the services are:

- (a) Covered;
- (b) Medically necessary;
- (c) Within the scope of the eligible client's medical care program;

(d) Ordered by a physician, physician's assistant (PA) or an advanced registered nurse practitioner (ARNP);

(e) Authorized, as required within this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda;

(f) Begun within thirty days of the date ordered;

(g) Provided by one of the health professionals listed in subsection (1) of this section;

(h) Billed according to this chapter, chapters 388-501 and 388-502, and the department's published billing instructions and numbered memoranda; and

(i) Provided as part of an outpatient treatment program:

- (i) In an office or outpatient hospital setting;
- (ii) In the home, by a home health agency as described in chapter 388-551 WAC;

(iii) In a neurodevelopmental center, as described in WAC 388-545-900; or

(iv) For children with disabilities, age two or younger, in natural environments including the home and community setting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

(5) For eligible clients, twenty years of age and younger, the department covers unlimited outpatient rehabilitation.

(6) The department pays for outpatient rehabilitation for adults twenty-one years of age and older as a short term benefit to treat an acute medical condition, disease, or deficit resulting from a new injury or post-surgery.

(7) Outpatient rehabilitation for clients twenty-one years of age and older must:

(a) Meet reasonable medical expectation of significant functional improvement within sixty days of initial treatment;

(b) Restore or improve the client to a prior level of function that has been lost due to medically documented injury or illness;

(c) Meet currently accepted standards of medical practice and be specific and effective treatment for the client's existing condition; and

(d) Include an on-going management plan for the client and/or the client's caregiver to support timely discharge and continued progress.

(8) For eligible adults, twenty one years of age and older, the department limits coverage of outpatient rehabilitation as follows:

(a) Occupational therapy, per client, per year:

(i) Without authorization:

(A) One occupational therapy evaluation;

(B) One occupational therapy re-evaluation at time of discharge; and

(C) Twenty-four units of occupational therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy when medically necessary and the client's diagnosis is any of the following:

(A) Acute, open, or chronic non-healing wounds;

(B) Brain injury with residual functional deficits within the past twenty-four months;

(C) Burns - second or third degree only;

(D) Cerebral vascular accident with residual functional deficits within the past twenty-four months;

(E) Lymphedema;

(F) Major joint surgery - partial or total replacement only;

(G) New onset muscular-skeletal disorders such as complex fractures which required surgical intervention or surgeries involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(H) New onset neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(I) Reflex sympathetic dystrophy;

(J) Swallowing deficits due to injury or surgery to face, head, or neck;

(K) Spinal cord injury resulting in paraplegia or quadriplegia within the past twenty-four months; or

(L) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the department.

(b) Physical therapy, per client, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy re-evaluation at time of discharge; and

(C) Twenty-four units of physical therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of physical therapy when medically necessary and the client's diagnosis is any of the following:

(A) Acute, open, or chronic non-healing wounds;

(B) Brain injury with residual functional deficits within the past twenty-four months;

(C) Burns - second and/or third degree only;

(D) Cerebral vascular accident with residual functional deficits within the past twenty-four months;

(E) Lymphedema;

(F) Major joint surgery - partial or total replacement only;

(G) New onset muscular-skeletal disorders such as complex fractures which required surgical intervention or surgeries involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(H) New onset neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(I) Reflex sympathetic dystrophy;

(J) Spinal cord injury resulting in paraplegia or quadriplegia within the past twenty-four months; or

(K) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the department.

(c) Speech therapy, per client, per year:

(i) Without authorization:

(A) One speech language pathology evaluation;

(B) One speech language pathology re-evaluation at the time of discharge; and

(C) Six units of speech therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to six additional units of speech therapy when medically necessary and the client's diagnosis is any of the following:

(A) Brain injury with residual functional deficits within the past twenty-four months;

(B) Burns of internal organs such as nasal oral mucosa or upper airway;

(C) Burns of the face, head, and neck - second or third degree only;

(D) Cerebral vascular accident with residual functional deficits within the past twenty-four months;

(E) New onset muscular-skeletal disorders such as complex fractures which require surgical intervention or surgery involving the vault, base of the skull, face, cervical column, larynx, or trachea;

(F) New onset neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infection polyneuritis (Guillain-Barre));

(G) Speech deficit due to injury or surgery to face, head, or neck;

(H) Speech deficit which requires a speech generating device;

(I) Swallowing deficit due to injury or surgery to face, head, or neck; or

(J) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the department.

(d) Durable medical equipment (DME) needs assessments, two per client, per year.

(e) Orthotics management and training of upper and/or lower extremities, two program units, per client, per day.

(f) Orthotic/prosthetic use, two program units, per client, per year.

(g) Muscle testing, one procedure, per client, per day. Muscle testing procedures cannot be billed in combination with each other. These procedures can be billed alone or with other physical and occupational therapy procedures.

(h) Wheelchair needs assessment, one per client, per year.

(9) For the purposes of this chapter:

(a) Each fifteen minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(10) For expedited prior authorization (EPA):

(a) A provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this section and in the department's published outpatient rehabilitation billing instructions;

(b) The appropriate EPA number must be used when the provider bills the department;

(c) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for EPA; and

(d) A provider may request expedited prior authorization once per year, per client, per each therapy type.

(11) The department evaluates a request for outpatient rehabilitation that is in excess of the limitations or restrictions, according to WAC 388-501-0169.

(12) Duplicate services for outpatient rehabilitation are not allowed for the same client when both providers are performing the same or similar procedure(s).

(13) The department does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(14) The department does not reimburse a healthcare professional for outpatient rehabilitation performed in an outpatient hospital setting when the healthcare professional is not employed by the hospital. The hospital must bill the department for the services.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-545-900 Neurodevelopmental centers. (1)

This section describes:

(a) Neurodevelopmental centers that may be reimbursed by the department;

(b) Clients who may receive covered services at a neurodevelopmental center; and

(c) Covered services that may be provided at and reimbursed to a neurodevelopmental center.

(2) In order to provide and be reimbursed for the services listed in subsection (4) of this section, the department requires a neurodevelopmental center provider to do all of the following:

(a) Be contracted with the department of health (DOH) as a neurodevelopmental center;

(b) Provide documentation of the DOH contract to the department; and

(c) ~~((Sign a))~~ Have an approved core provider agreement with the department ~~((; and~~

~~((d) Receive a neurodevelopmental center provider number from the department)).~~

(3) Clients ~~((who are))~~, twenty years of age or younger ~~((and who meet the following eligibility criteria))~~, may receive ~~((covered services from))~~ outpatient rehabilitation

(occupational therapy, physical therapy, and speech therapy) in a department-approved neurodevelopmental centers ~~((;~~

~~((a) For occupational therapy, refer to WAC 388-545-300(2);~~

~~((b) For physical therapy, refer to WAC 388-545-500(2);~~

~~((c) For speech therapy and audiology services, refer to WAC 388-545-700(2); and~~

~~((d) For early and periodic screening, diagnosis and treatment (EPSDT) screening by physicians, refer to WAC 388-534-0100)).~~

(4) The department reimburses neurodevelopmental centers for providing the following services to clients ~~((who meet the requirements in subsection (3) of this section))~~:

(a) ~~((Occupational therapy services as described in WAC 388-545-300))~~ Outpatient rehabilitation services as described in WAC 388-545-200; and

(b) ~~((Physical therapy services as described in WAC 388-545-500;~~

~~((c) Speech therapy and audiology services as described in WAC 388-545-700; and~~

~~((d))~~ Specific pediatric evaluations and team conferences that are:

(i) Attended by the center's medical director; and

(ii) Identified as payable in the department's billing instructions.

(5) In order to be reimbursed, neurodevelopmental centers must meet the department's billing requirements in WAC 388-502-0020, 388-502-0100 and 388-502-0150.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-545-300 Occupational therapy.

WAC 388-545-500 Physical therapy.

WAC 388-545-700 Speech/audiology services.

AMENDATORY SECTION (Amending WSR 10-10-087, filed 5/3/10, effective 6/3/10)

WAC 388-551-2110 Home health services—Covered specialized therapy. ~~((+))~~ The department ~~((limits))~~ covers specialized therapy ~~((visits to one per client, per day, per type of specialized therapy))~~ (also known as outpatient rehabilitation) in an in-home setting by a home health agency. See chapter 388-545 WAC outpatient rehabilitation for coverage and limitations. Specialized therapy is defined in WAC 388-551-2010.

~~((2))~~ The department does not allow duplicate services for any specialized therapy for the same client when both providers are performing the same or similar procedure(s).))

WSR 11-08-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-47—Filed March 31, 2011, 2:23 p.m., effective March 31, 2011,
7:00 p.m.]

Effective Date of Rule: March 31, 2011, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-04600E; 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 regulation closes Puget Sound Crab Management Regions 3-1, 3-2 and 3-3 on March 31, 2011, as agreed upon in state/tribal management plans adopted for these regions. This regulation maintains the closure of Puget Sound Crab Management Region 2 East and 2 West because the state commercial crab harvest has reached its quota for this area. 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: March 31, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600H Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 7:00 p.m., March 31, 2011, until further notice, it is unlawful to fish for or possess Dungeness crab for commercial purposes in those waters of Puget Sound Crab Management Region 3-1 (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B), Puget Sound Crab Management Region 3-2 (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A and 25E) and Puget Sound Crab Manage-

ment Region 3-3 (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29).

(2) Effective immediately, until further notice, it is unlawful to fish for or possess Dungeness crab for commercial purposes in those waters of Puget Sound Crab Management Region 2 West (which includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and 26A-W) and Puget Sound Crab Management Region 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East).

(3) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(4) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. March 31, 2011:

WAC 220-52-04600E	Puget Sound crab fishery— Seasons and areas. (11-01)
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WSR 11-08-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-49—Filed April 4, 2011, 10:10 a.m., effective April 6, 2011,
12:01 a.m.]

Effective Date of Rule: April 6, 2011, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-07100H; and 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: The commercial non-Indian sea cucumber harvest quota share in District 1, the San Juan Island area, is nearing exhaustion. In order to allow continued harvest opportunity and ensure that the area harvest quota is not exceeded, sea cucumber District 1 will close, effective Wednesday, April 6, 2011. Sea cucumber landings reported from District 5, the South Puget Sound area, are sufficient to keep this area open. Districts 2, 3 and 4 remain closed for the 2010-2011 harvest management period. 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: April 4, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100I Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective 12:01 a.m. April 6, 2011, 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 District 5, seven days per week.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 11:59 p.m. April 5, 2011.

WAC 220-52-07100H Sea cucumbers. (11-27)

**WSR 11-08-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-48—Filed April 4, 2011, 10:20 a.m., effective April 7, 2011,
12:01 a.m.]

Effective Date of Rule: April 7, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

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

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

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

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

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

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

Date Adopted: April 4, 2011.

Philip Anderson
Director

NEW SECTION

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

1. Effective 12:01 a.m. April 7 through 11:59 a.m. April 9, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 9, 2011:

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

WSR 11-08-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-46—Filed April 4, 2011, 11:11 a.m., effective April 15, 2011]

Effective Date of Rule: April 15, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-350 and 220-56-380.

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: Surveys indicate that the clam population at Fort Flagler State Park has increased, allowing a season that is one month longer than last year's season. Oyster season at this beach should coincide for enforcement purposes with the clam season. 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 2, 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: April 4, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-35000M Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

Fort Flagler State Park: Open April 15 until further notice.

NEW SECTION

WAC 220-56-38000V Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take

and possess oysters for personal use from the following public tidelands except during the open periods specified herein:

Fort Flagler State Park: Open April 15 until further notice.

WSR 11-08-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-54—Filed April 5, 2011, 1:20 p.m., effective April 6, 2011, 11:00 a.m.]

Effective Date of Rule: April 6, 2011, 11:00 a.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 220-33-01000T; and amending WAC 220-33-010.

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

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

Reasons for this Finding: Sets the second commercial non-Indian spring chinook fishery for 2011. Restricts the mainstem catch to 6 adult adipose fin-clipped chinook per vessel. Adipose fin-clipped jack salmon (<24 inches) may be sold and do not count towards the 6-adult limit. Once the landing limit has been reached, all nonretainable chinook (including adipose fin-clipped adult fish) must be immediately returned to the water or placed in the recovery box. Nets not authorized for the mainstem fishery MAY NOT be onboard the vessel. Spring select area commercial seasons remain in place. Impacts to ESA-listed salmon are expected to be within ESA limits. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 8 and April 4, 2011. 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.

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: April 5, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000U Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and

Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) Area: SMCRA 1A, 1B, 1C, 1D and 1E.

b) Dates: 11:00 a.m. to 5:00 p.m. Wednesday, April 6, 2011.

c) Allowable Sales: Adipose fin-clipped salmon, white sturgeon (43-54 inch fork length), and shad. A maximum of 6 adipose fin-clipped adult Chinook may be possessed or sold by each participating vessel. The first 6 adult hatchery fish caught must be retained. No additional drifts may be conducted once the adult Chinook landing limit has been met. Adipose fin-clipped jack salmon (less than 24 inches) may be sold and do not count against the adult salmon landing limit. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. An adult salmon is defined as a fish at least 24 inches in total length.

d) Sanctuaries: Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers, as applicable.

e) Gear: Drift gill nets only; 4-1/4 inch maximum mesh. Multifilament web required for the 4-1/4 inch.

Net length not to exceed **150 fathoms**, except tangle nets constructed with an optional steelhead excluding device (large mesh panel, weedlines, or droppers) hung between the corkline and the 4 1/4" maximum mesh size tangle net may extend to a maximum length of **175 fathoms**. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the headline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks required under miscellaneous regulations. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

f) Miscellaneous Regulations:

Soak times: Defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes.

Red corks: Are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required

Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-retainable salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

Observer program: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

Live Capture workshop: Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

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

2. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: Open hours are: 7:00 p.m. Sundays to 7:00 a.m. Mondays, and 7:00 p.m. Wednesdays to 7:00 a.m. Thursdays from April 17 through June 9, 2011.

c) Gear: Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010(17)). Nets (or parts of nets) not specifically authorized for use in these areas may be onboard a 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. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff. A sampling station will be established approximately 2 miles downstream of the Highway 4 Bridge near Stephan's dock.

f) 24-hour quick reporting in effect for Washington buyers.

3. Tongue Point/South Channel

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island, (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 25 through June 10, 2011.

Gear: Gillnets. In the Tongue Point fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

c) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

d) Miscellaneous: During April 25 through May 20, 2011, transportation or possession of fish outside the fishing area is unlawful (except while in transit to ODFW sampling stations) until ODFW staff has biologically sampled individual catches. A sampling station will be established near the Tongue Point area. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 23, fishers are required to call 503-428-0518 and leave a message including name, catch, and where and when fish will be sold.

e) 24-hour quick reporting in effect for Washington buyers.

4. Blind Slough/Knappa Slough Select Area

a) Area: Only the Blind Slough area is open during winter season, and both Blind Slough and Knappa Slough areas are open during spring season. From May 2 through June 10, 2011, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (Fall season boundary).

b) Dates: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 18 through June 10, 2011.

c) Gear: Gillnets. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d) Allowable sales: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers. Permanent transportation rules in effect.

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 11:00 a.m. April 6, 2011:

WAC 220-33-01000T Columbia River seasons below Bonneville. (11-45)

WSR 11-08-056 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-53—Filed April 5, 2011, 1:31 p.m., effective April 10, 2011, 12:01 a.m.]

Effective Date of Rule: April 10, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900X; 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: The closure date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of five hundred fish will be reached on April 9, 2011. 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: April 5, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900H 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 Bonneville Dam upstream to The Dalles Dam.

(2) Effective 12:01 a.m. April 10, 2011, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900X Exceptions to statewide rules—Columbia River sturgeon. (10-21)

WSR 11-08-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-50—Filed April 5, 2011, 2:39 p.m., effective May 7, 2011, 7:00 a.m.]

Effective Date of Rule: May 7, 2011, 7:00 a.m.

Purpose: Amend personal use fishing rules.

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

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 regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available, but only enough recreational shares exist for a limited number of open days in these marine areas. 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 Mak-

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

Date Adopted: April 5, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-32500W Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-325, effective 7:00 a.m. May 7, 2011, through 11:59 p.m. May 31, 2011, it is unlawful to fish for or possess shrimp taken for personal use in all waters Marine Areas 7, 8-1, 8-2, 9, 10, 11, 12 and the Discovery Bay Shrimp District, except as provided for in this section:

1) Marine Area 7 - open May 7, 11, 13, 14, 25 and 28.

2) Marine Areas 8-1, 8-2, 9 and 10 - Open May 7 and 11 from 7:00 a.m. through 3:00 p.m., and divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on those open days in Marine Area 8-2.

3) Marine Area 11 - Open May 7 from 7:00 a.m. through 3:00 p.m.

4) Marine Area 12 - Open May 7, 11, 14 and 25 from 9:00 a.m. through 1:00 p.m.

5) Discovery Bay Shrimp District - Open May 7, 11 and 14 from 7:00 a.m. through 3:00 p.m.

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 June 1, 2011:

WAC 220-56-32500W Shrimp—Areas and seasons.

WSR 11-08-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-51—Filed April 5, 2011, 2:43 p.m., effective April 16, 2011, 12:01 a.m.]

Effective Date of Rule: April 16, 2011, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-03100H; and amending WAC 220-40-031.

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 white sturgeon are available within the Willapa Bay management guideline for a commercial fishery. 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: April 5, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-40-03100H Willapa Bay spring white sturgeon fishery. Notwithstanding the provisions of WAC 220-40-031, effective April 16, through May 15, 2011, it is unlawful to fish for sturgeon in Willapa Bay for commercial purposes or to possess sturgeon taken from those waters for commercial purposes, except that:

Fishing periods

(1) Gillnet gear may be used to fish for white sturgeon:

Time	Area
12:01 a.m. April 16 through 11:59 p.m. May 15, 2011	Salmon Management and Catch Reporting Area (SMCRA) Area 2G easterly of a line from the most northerly upland at Leadbetter Point (approximately 46 degrees 39' N) to the eastern most upland at Toke Point (approximately 123 degrees 58' W); and areas 2H, 2J and 2M.

The Tokeland Boat Basin is closed to commercial fishing during the openings in SMCRA 2G described in this section. The Tokeland Boat Basin means that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-second) to Tokeland Channel Marker "4" to the tip of the seawall.

Gear

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear.

(b) April 16 through May 15, 2011 - 9-inch minimum mesh.

(c) All salmon, non-legal sturgeon, and all steelhead must be handled with care to minimize injury to fish and released immediately to the river/bay.

Other

(3) A new method of measuring white sturgeon state-wide became effective January 1, 2009. This method measures fork length from the tip of the nose to the fork in the tail with the fish on its side. The new legal fork length size limit is 43 - 54 inches.

(4) Quick reporting is required (WAC 220-69-240) by 10:00 a.m. the day following landing for wholesale dealers and fishers retailing their fish.

(5) Fishers must take department observers, if requested by WDFW staff, when participating in these openings and provide Notice of Intent via phone, fax, or e-mail to participate in Quick Reporting, WAC 220-69-240, prior to 10:00 a.m. April 12, 2011.

(6) The NOAA Fisheries listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most green sturgeon captured in Willapa Bay fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

(7) Report ALL encounters with Chinook, green sturgeon and steelhead (your name, date of encounter, and number of species encountered) to the Quick Reporting office via phone at 866.771.1280, via fax at 360.249.1229, or e-mail at harbor-fishtickets@dfw.wa.gov.

(8) Retrieve any information from spaghetti tags near the dorsal fin on green or white sturgeon. For green sturgeon, do NOT remove tags. For retained white sturgeon, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA, 98563.

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 12:01 a.m. May 16, 2011.

WAC 220-40-03100H Willapa Bay spring white sturgeon fishery.

WSR 11-08-068

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed April 6, 2011, 10:14 a.m., effective April 7, 2011]

Effective Date of Rule: April 7, 2011.

Purpose: Upon approval from the Centers for Medicare and Medicaid (CMS) of the department's state plan amendment, the department developed a new alternative payment methodology for federally qualified health centers (FQHCs) and rural health clinics (RHCs).

Citation of Existing Rules Affected by this Order: Amending WAC 388-548-1400 and 388-549-1400.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and 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: This immediate implementation was directed under Executive Order 10-04 and the supplemental operating budget enacted on February 18, 2011 (ESHB 1086) - Section 208(44). Delaying this adoption could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients.

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: March 31, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-09-002, filed 4/7/10, effective 5/8/10)

WAC 388-548-1400 Federally qualified health centers—Reimbursement and limitations. (1) ~~((Effective))~~

Specific FQHC Base Encounter Rate	$\frac{(1999 \text{ Rate} \times 1999 \text{ Encounters}) + (2000 \text{ Rate} \times 2000 \text{ Encounters})}{(1999 \text{ Encounters} + 2000 \text{ Encounters}) \text{ for each FQHC}}$
=	

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI for primary care services, and adjusted for any increase or decrease within the center's scope of services.

(5) The department calculates the FQHC's APM encounter rate for services provided on and after January 1, 2009, as follows:

(a) ~~((Beginning January 1, 2009,))~~ The APM utilizes the FQHC base encounter rates, as described in WAC 388-548-1400 (4)(b).

For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the department's payment methodology for federally qualified health centers (FQHC) ~~((conforms to 42 U.S.C. 1396a(bb)). As set forth in 42 U.S.C. 1396a (bb)(2) and (3), all FQHCs that provide services on January 1, 2001, and through December 31, 2008, are reimbursed on))~~ was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) ~~((Effective))~~ For services provided beginning January 1, 2009, FQHCs have the choice to ~~((continue being))~~ be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM ~~((must))~~ will be at least as much as payments that would have been made under the PPS.

(3) The department calculates the FQHC's PPS encounter rate as follows:

(a) Until the FQHC's first audited cost report is available, the department pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicaid cost report, the department sets the clinic's encounter rate at one hundred percent of its total reasonable costs as defined in the cost report. The FQHC receives this rate for the remainder of the calendar year during which the audited cost report became available. Thereafter, the encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

(4) For FQHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the center's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-548-1500.

(b) The PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

~~((+))~~ (b) The base rates are adjusted to reflect any valid changes in scope of service between years 2002 and 2009.

~~((+))~~ (c) The adjusted base rates are then inflated by each annual percentage, from years 2002 through 2009, of the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) Upon approval from the federal centers for medicare and medicaid services (CMS) of the department's state plan amendment, the department calculates the FQHC's APM encounter rate for services provided on and after April 7,

2011, as described in subsections (a) and (b) of this section. Pending state plan approval by CMS, the department will continue to pay FQHCs at the encounter rate described in subsection (5) of this section. For all payments made for services between April 7, 2011, and the date CMS approves the state plan amendment, the department will recoup from FQHCs any amount paid in excess of the encounter rate established in this section.

(a) The APM utilizes each clinic's PPS rate for each calendar year and inflates it by five percent.

(b) The department will ensure that the payments made under the APM ((pays an amount that is)) are at least equal to the payments that would be made under the PPS((-the annual inflator used to increase the APM rates is the greater of the APM index or the MEI)).

~~((c) The department will periodically rebase the APM rates. The department will not rebase rates determined under the PPS.))~~

~~((6)) (7) The department limits encounters to one per client, per day except in the following circumstances:~~

~~(a) The visits occur with different healthcare professionals with different specialties; or~~

~~(b) There are separate visits with unrelated diagnoses.~~

~~((7)) (8) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.~~

~~((8)) (9) Payments for nonFQHC services provided in an FQHC are made on a fee-for-service basis using the department's published fee schedules. NonFQHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 557 WAC.~~

~~((9)) (10) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.~~

~~((10)) (11) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The department does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.~~

~~((11)) (12) For clients enrolled with ((a managed care organization (MCO))) an MCO, the department pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).~~

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the department performs an annual reconciliation of the enhancement payments. For each FQHC, the department will compare the amount actually paid to the amount determined by the following formula: ~~((Managed))~~ managed care encounters times encounter rate) less FFS equivalent of MCO services. If the center has been overpaid, the department will recoup the appropriate amount. If the center has been underpaid, the department will pay the difference.

AMENDATORY SECTION (Amending WSR 10-09-030, filed 4/13/10, effective 5/14/10)

WAC 388-549-1400 Rural health clinics—Reimbursement and limitations. (1) ~~((Effective))~~ For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the department's payment methodology for rural health clinics (RHC) ((conforms to)) was a prospective payment system (PPS) as authorized by 42 USC 1396a (bb)(2) and (3). ((RHCs that provide services on January 1, 2001 through December 31, 2008 are reimbursed on a prospective payment system (PPS).))

~~((Effective))~~ (2) For services provided beginning January 1, 2009, RHCs have the choice to ((continue being)) be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 USC 1396a (bb)(6). As required by 42((U.S.C.)) USC 1396a (bb)(6), payments made under the APM ((must)) will be at least as much as payments that would have been made under the PPS.

~~((2))~~ (3) The department calculates the RHC's PPS encounter rate for RHC core services as follows:

(a) Until the RHC's first audited medicare cost report is available, the department pays an average encounter rate of other similar RHCs (whether the RHC is classified as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(b) Upon availability of the RHC's audited medicare cost report, the department sets the clinic's encounter rate at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the clinic has provided during the time period covered in the audited cost report. The RHC will receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

~~((3))~~ (4) For RHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the clinic's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-549-1500.

(b) The PPS base encounter rates are determined using medicare's audited cost reports and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(1999 \text{ Rate} \times 1999 \text{ Encounters}) + (2000 \text{ Rate} \times 2000 \text{ Encounters})}{(1999 \text{ Encounters} + 2000 \text{ Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI and adjusted for any increase or decrease in the clinic's scope of services.

~~((4))~~ (5) The department calculates the RHC's APM encounter rate for services provided on and after January 1, 2009, as follows:

(a) ~~(Beginning January 1, 2009,)~~ The APM utilizes the RHC base encounter rates as described in WAC 388-549-1400 ~~((3)(b))~~ (4)(b).

(b) The base rates are inflated by each annual percentage, from years 2002 through 2009, of the APM index.

(c) The result is the year 2009 APM rate for each RHC that chooses to be reimbursed under the APM.

(6) Upon approval from the federal centers for medicare and medicaid services (CMS) of the department's state plan amendment, the department calculates the RHC's APM encounter rate for services provided on and after April 7, 2011, as described in subsections (a) and (b) of this subsection. Pending state plan approval by CMS, the department will continue to pay RHCs at the encounter rate described in subsection (5) of this section. For all payments made for services between April 7, 2011, and the date CMS approves the state plan amendment, the department will recoup from RHCs any amount paid in excess of the encounter rate established in this section.

(a) The APM utilizes each clinic's PPS rate for each calendar year and inflates it by five percent.

(b) ~~((7))~~ The department will ensure that the payments made under the APM ~~((pays an amount that is))~~ are at least equal to the payments that would be made under the PPS ~~((in accordance with 42 USC 1396a (bb)(6), the annual inflator used to increase the APM rates is the greater of the APM index or the MEI)).~~

~~((c))~~ The department periodically rebases the APM rates. The department does not rebase rates determined under the PPS.

~~((d))~~ When rebasing the APM encounter rates, the department applies a productivity standard to the number of visits performed by each practitioner group (physicians and mid-levels) to determine the number of encounters to be used in each RHC's rate calculation. The productivity standards are determined by reviewing all available RHC cost reports for the rebasing period and setting the standards at the levels necessary to allow ninety-five percent of the RHCs to meet the standards. The encounter rates of the clinics that meet the standards are calculated using each clinic's actual number of encounters. The encounter rates of the other five percent of clinics are calculated using the productivity standards. This process is applied at each rebasing, so the actual productivity standards may change each time encounter rates are rebased.)

~~((5))~~ (7) The department pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

~~((6))~~ (8) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

~~((7))~~ (9) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the department's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 388-557 WAC.

~~((8))~~ (10) For clients enrolled with a managed care organization (MCO), covered RHC services are paid for by that plan.

~~((9))~~ (11) The department does not pay the encounter rate or the enhancements for clients in state-only programs. Services provided to clients in state-only programs are considered fee-for-service, regardless of the type of service performed.

~~((10))~~ (12) For clients enrolled with ~~((a managed care organization (MCO)))~~ an MCO, the department pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 USC 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the department performs an annual reconciliation of the enhancement payments. For each RHC, the department will compare the amount actually paid to the amount determined by the following formula: (managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the clinic has been overpaid, the department will recoup the appropriate amount. If the clinic has been underpaid, the department will pay the difference.

WSR 11-08-076

EMERGENCY RULES

REDISTRICTING COMMISSION

[Filed April 6, 2011, 11:24 a.m., effective April 6, 2011, 11:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of adopting these rules is to provide clear direction to the public for participating in the redistricting process. The rules outline how third party plans are to be submitted, and where to file those plans. The rules also govern the operation of the commission as it works on the new legislative and congressional districts in Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 417-01-110, 417-01-125, 417-01-150, 417-01-155, 417-02-100, 417-02-110, 417-02-115, 417-02-125, 417-02-130, 417-02-135, 417-02-140, 417-02-155, 417-06-130, and 417-06-150.

Statutory Authority for Adoption: RCW 44.05.080(2).

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

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

Reasons for this Finding: Pursuant to Washington Constitution Art. II, Section 43, and RCW 44.05.030, the Washington redistricting commission is required to submit to the state legislature, no later than January 1, 2012, a redistricting plan. The commission's administrative rules encourage members of the public to submit proposed redistricting plans, and encourages early submission of third party plans. In order for the public to be able to participate in a timely and meaningful way in the development of a plan, the procedures applicable to the process must be known to the public immediately. These procedures include such things as a correct address and format for plan submission. As this has changed since the 2001 effort, it is necessary to amend the rules. With normal time periods for permanent rule making, the new procedures would not be known to the public for several months, and would impede the public's participation [participation] in the 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 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 15, 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: March 29, 2011.

Bonnie Bunning
Executive Director

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-110 Commission responsibilities and duties. Pursuant to article 2, section 43 of the state constitution and chapter 44.05 RCW, the commission's duties are:

(1) To accomplish state legislative and congressional redistricting;

(2) To act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) To disclose and preserve public records as specified in chapters 42.17, 42.17A, and 40.14 RCW;

(4) To hold open public meetings pursuant to the Open Public Meetings Act, RCW 42.30;

(5) To prepare and disclose its minutes pursuant to RCW 42.32.030;

(6) To prepare and adopt agency rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW;

(7) To prepare and publish a report with a redistricting plan as provided in RCW 44.05.080(7);

(8) To distribute census data to counties for local redistricting as required by chapter ~~((29.70))~~ 29A.76 RCW.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-125 Offices. (1) The commission office is located at ~~((505 East Union Avenue, Suite 350))~~ 1063 Capitol Way South, Suite 16, Olympia, Washington. The mailing address is: Washington State Redistricting Commission, P.O. Box 40948, Olympia, WA, 98504-0948. Telephone number: ~~((360-586-9000))~~ 360-786-0770. Facsimile number: ~~((360-586-8995))~~ 360-586-0433. Internet address: www.redistricting.wa.gov. Electronic mail address: contact@redistricting.wa.gov. Office hours for the commission shall be from 8 a.m. to 5 p.m. on all normal business days. Office hours for inspection and copying of public records shall be as provided in chapter two hereof.

(2) The commission address and contact information shall remain in effect for the duration of the ~~((2001-2002))~~ 2011-2012 commission. Inquiries after that date shall be directed to the secretary of state.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-150 Meetings. (1) Regular meetings: The commission shall meet regularly during the months of April through December in each year ending in one, at the commission's offices, or other suitable location, in Olympia, as published in the *Washington State Register*.

(2) Special meetings: The commission shall meet at other times and places, at the call of the chair or of a majority of the commissioners. Notice of special meetings shall be given at least twenty-four hours before the time of such meeting as specified in the notice, to the media and to all others who have requested notice of commission meetings.

(3) Agenda: The chair, or the commission majority calling a special meeting, shall propose an agenda for the meeting, which shall be distributed to commissioners, to the media, and to others who have requested notice, at the earliest practical date prior to the meeting.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-155 Conduct of commission business.

(1) Three voting members of the commission shall constitute a quorum for the conduct of business.

(2) The votes of any three of the commissioners shall be required for any official action of the commission: Provided, That the chair shall have the authority on behalf of the commission to execute contracts and leases, and approve expenditures and reimbursements, related to the business of the commission. The chair may, without the prior approval of the commission, authorize expenditures for equipment and supplies not to exceed \$15,000. Expenditures made pursuant to this section shall be reported as a separate item on the agenda at the next commission meeting.

(3) The chair shall not have a vote at any meeting of the commission.

(4) Commission meetings shall be conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW).

(5) The commission shall not adopt any redistricting plan, or partial redistricting plan, except at a public meeting, notice of which has been given in accordance with these rules.

(6) The commission shall not take any action by secret ballot.

~~(7) ((When not inconsistent with the state constitution, statute, or these rules, parliamentary matters before the commission shall be governed by Robert's Rules of Order, Tenth Edition.~~

~~(8))~~ Motions shall not require a second in order to be placed before the commission for a vote.

~~((9))~~ (8) All public meetings of the commission shall be electronically recorded. The minutes and tapes thereof shall be available to the public in accordance with the rules regarding access to public records held by the commission. At all meetings of the commission where public testimony regarding redistricting boundaries is a scheduled agenda item, the commission shall provide for the presence of a court reporter to record such testimony. A typewritten transcript of such testimony shall be prepared as soon as possible after such hearings and shall be made available to the public in accordance with the rules regarding access to public records held by the commission. The transcript of a court reporter prepared pursuant to this section shall become part of the official records of the commission.

~~((10))~~ (9) Except as provided in this section, the chair shall preside at all meetings. In the event of the chair's absence the commission shall select from among the voting members a temporary chair to preside in the chair's absence. The position of temporary chair shall alternate between a member of the two parties represented on the commission.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-100 Purpose. The purpose of this chapter is to establish methods by which the commission will comply with the provisions of chapter ~~((42.17))~~ 42.56 RCW dealing with public records.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-105 Definitions. As used in this chapter:

(1) All words and phrases defined in chapter one of this title (WAC 417-01-120) and RCW 44.05.020 shall have the same meaning for the purposes of this chapter.

(2) "Public records" shall have the same meaning as defined in RCW ~~((42.17.020))~~ 42.56.010.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-110 Public records available. All public records of the commission are available for public inspection

and copying pursuant to these rules except as otherwise provided in RCW ~~((42.17.340))~~ 42.56.010 or other law.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-115 Public records officer. The commission's public records shall be in the charge of the public records officer, who shall be the executive director of the commission. The public records officer shall be responsible for: Implementation of commission policy as to release of public records; authorizing release of records, which authorization shall be in writing; and ensuring staff compliance with the requirements of these rules and the requirements of chapter ~~((42.17))~~ 42.56 RCW. The public records officer may designate in writing an assistant public records officer to perform the duties of public records officer when he or she is absent or unavailable.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-125 Requests of public records. In accordance with chapter ~~((42.17))~~ 42.56 RCW that agencies provide full public access to public records, prevent unreasonable invasion of privacy, protect public records from damage or disorganization and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained by members of the public upon compliance with the following procedure:

(1) A request to inspect or copy public records shall be made in writing or upon a form prescribed herein which shall be available at the commission's office. The written request or form shall be presented to the public records officer or designated assistant during the office hours established in this chapter. The written request or form shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time and date on which the request was made;
- (c) A specific identification or description of each requested record;
- (d) If the matter requested is referenced within the current index maintained by the commission, a reference to the requested record as it is described in such current index; and
- (e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

(2) The public records officer or designated assistant will ascertain whether the information requested is exempt from public inspection and copying as defined in RCW ~~((42.17-340))~~ 42.56.210 or other law.

(3) Only after a determination has been made that all or such portion of a public record as is not deleted may be inspected, shall such public record or portion thereof be made available for inspection by a member of the public.

(4) In all cases, it shall be the obligation of the public records officer or designated assistant to:

- (a) Locate the specific document(s) requested by the member of the public in the most timely manner possible;

(b) Assist the member of the public in appropriately identifying the public record requested;

(c) Protect and otherwise prevent damage to the public record being inspected and copied;

(d) Prevent the disorganization of file folders or document containers; and

(e) Prevent excessive interference with the other essential functions of the commission.

(5) Only the staff and commissioners may open files to gain access to commission records.

(6) Original copies of public records of the commission may not be taken from the premises of the commission by a member of the public without being accompanied by staff or a commissioner.

(7) Public inspection and copying of commission records shall be done only in such locations as are approved by the public records officer or designated assistant at locations that must provide an opportunity for staff to ensure that no public record of the commission is damaged, destroyed, unreasonably disorganized, or removed from its proper location or order by a member of the public.

(8) Public records of the commission may be copied only on the copying machine of the commission unless the public records officer or designated assistant authorizes other arrangements.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-130 Copying. No fee shall be charged for the inspection of public records. The commission shall charge for copies of public records and the use of commission copy equipment such amount as is necessary to reimburse the commission for its actual cost incident to such copying. The commission shall charge a fee of fifteen cents per page for copying 8.5" x 11" documents as established in RCW ((42-17-300)) 42.56.120. The executive director shall establish other charges based upon actual costs for copying public records. Charges will not be assessed if the total cost involved in a particular request is less than one dollar. If the public records officer or designated assistant deems it more efficient to have copying done outside the office of the commission, the charges will be based on the actual cost of such outside copying service.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-135 Exemptions. (1) The public records officer or designated assistant shall delete information from any record prior to permitting public inspection or copying if the information is exempt from disclosure pursuant to RCW ((42-17-310)) 42.56.210 or other law. After such information is deleted, the remainder of the record shall be made available.

(2) To the extent allowed by law, the commission reserves the right to allow the public to inspect but not copy certain public records where there is reason to believe that the ability to copy such records would be a violation of copyright agreements, contracts, or census bureau or other governmental requirements.

(3) Pursuant to RCW ((42-17-260)) 42.56.070, the commission reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ((42-17)) 42.56 RCW. The public records officer or designated assistant will justify such deletion in writing.

(4) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record or information and a brief explanation of how the exemption applies to the records or information withheld.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-140 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition the commission chair for prompt review of such decisions by rendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or designated assistant, which constituted or accompanied the denial.

(2) Immediately after receiving a written request or review of a decision denying a public record, the public records officer or designated assistant denying the request shall refer it to the commission chair. The chair shall immediately consider the matter and either affirm or reverse, in whole or in part, such denial or call a special meeting of the commission as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision from the chair or commission within two business days following the original denial, in accordance with RCW ((42-17-320)) 42.56.520.

(3) Administrative remedies shall not be considered exhausted until the chair, or in the event of a special meeting scheduled to address the denial, the commission has returned the petition with a decision within two business days of the denial, or until the close of the second business day following the denial, whichever occurs first.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-155 Records index. (1) The commission shall implement a records index for the identification and location of official agency records. Those records which are considered exempt for the purposes of this chapter, RCW ((42-17-310)) 42.56.210 and other law shall be noted on the index.

(2) The index shall be available for inspection and copying according to the provisions of WAC 417-02-120.

(3) The index shall be updated quarterly in those months when the commission is convened.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-06-130 Format for formal plans. (1) Any formal plan submitted to the commission shall be submitted in ~~((one of))~~ the following approved formats:

~~(a) ((Paper map submissions: The commission will have available for public purchase paper maps, created using current geographic data provided by the U.S. Bureau of the Census. The maps will be sold for an amount (to be established by the executive director) sufficient to cover the cost to the commission of producing the map copies. Map scale may vary, depending on the population density in the area covered. Maps may be purchased singly or in sets. Formal plan paper map submissions from individuals and groups shall be made on the maps provided by the commission, or on full-size copies thereof. Explanations of the commission's maps, and instructions to users for submission of formal plans, shall be made available free of charge from the commission.~~

~~(b))~~ Electronic submissions: Formal plan electronic submissions from individuals and groups are encouraged, and shall be made on ((3.5-inch floppy disks or on)) either:

(i) CD-ROMs containing a table of equivalencies file giving the census block to district assignments as assignment files in ((dBase, INFO,)) Excel or Access; or

(ii) Text file format containing polygon identification and polygon district assignment columns; or

(iii) As district files containing a district identification number; or

(iv) As a shape file or geodatabase; or

(v) In a format approved by the U.S. Department of Justice.

(b) Paper map submissions: The commission will have available for public purchase paper maps, created using current geographic data provided by the U.S. Bureau of the Census. The maps will be sold for an amount (to be established by the executive director) sufficient to cover the cost to the commission of producing the map copies. Map scale may vary, depending on the population density in the area covered. Maps may be purchased singly or in sets. Formal plan paper map submissions from individuals and groups shall be made on the maps provided by the commission, or on full-size copies thereof. Explanations of the commission's maps, and instructions to users for submission of formal plans, shall be made available free of charge from the commission.

Materials explaining ~~((this))~~ these format(s) shall be posted on the commission web site (www.redistricting.wa.gov), and made available free of charge from the commission. The commission shall ((make electronic information available which shall include)) post census and geographic data on the commission web site (www.redistricting.wa.gov). ((The electronic information will be made)) Such data will also be available on CD-ROM at a charge (to be established by the executive director) sufficient to cover the cost to the commission of producing CD-ROM copies of the electronic files.

Each electronic formal plan submission shall be based upon current and official Bureau of the Census geography and Public Law 94-171 file unique block identity code of state, county, tract, and block, and shall be accompanied by a full description of its contents, including an identification by

name and/or location of each data file that is contained, a detailed record layout for each such file, a record count for each such file, and a full description of the format.

(2) Individuals and groups submitting formal plans shall supplement their paper map or electronic submissions with the following information: Name, address and telephone number of a contact person; a submission cover letter; the total number of plans submitted; a narrative explanation of the plan's compliance with the constitutional and statutory requirements identified in WAC 417-06-120; and a description of the original source materials and data used for the submission. They may also include with the formal plan such other supporting materials and data as they deem appropriate.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-06-150 Time and place of submissions.

Early submission of third party plans is encouraged. All submissions and supporting materials should be mailed or delivered to the commission's office (not to a commissioner) in Olympia, or they may be presented to commission staff at any public hearing held by the commission. Submissions may be electronically mailed to the commission's address identified in WAC 417-01-125 ~~((only if the U.S. Postal Service or other carrier delivers a physical copy of all submission and supporting materials to the commission offices)), or made directly to the commission through any redistricting mapping tool on its web site.~~ The date of the electronically mailed submission shall be the date the delivered materials are received by the commission. The submission envelope, cover letter and all other submission materials should be clearly marked: "Redistricting Plan Submission." The person or organization submitting the plan bears the responsibility and accepts the risk to ensure timely delivery of the plan to the commission. The commission has no responsibility to review untimely or improperly submitted plans.