

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

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed? ~~((Once the division of child support (DCS) starts providing support enforcement services under RCW 26.23.045 and chapter 74.20 RCW, the case must remain open, unless DCS determines that:))~~

(1) ~~((There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;))~~ The circumstances under which the division of child support (DCS) may close a case depend on whether the application for services was made directly to DCS or to another governmental entity.

(2) ~~((The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;))~~ WAC 388-14A-2081 discusses closure of a case when one of the parties submitted an application for support enforcement services directly to DCS, which includes when DCS opened the case as the result of an application for public assistance in the state of Washington.

(3) ~~((The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:~~

- ~~(a) Institutionalized in a psychiatric facility;~~
- ~~(b) Incarcerated without possibility of parole; or~~
- ~~(c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.~~
- ~~(4) The applicant, agency or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;~~
- ~~(5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;~~
- ~~(6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;~~
- ~~(7) DCS is unable to contact the applicant, agency or recipient of services for at least sixty days;~~
- ~~(8) DCS documents failure to cooperate by the custodial parent (CP) or the initiating jurisdiction, and that cooperation is essential for the next step in enforcement;~~
- ~~(9) DCS cannot obtain a paternity order because:~~
 - ~~(a) The putative father is dead;~~
 - ~~(b) Genetic testing has excluded all putative fathers;~~
 - ~~(c) The child is at least eighteen years old;~~
 - ~~(d) DCS, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or~~
 - ~~(e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.~~
- ~~(10) DCS, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);~~
- ~~(11) DCS, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;~~
- ~~(12) DCS has provided locate only services in response to a request for state parent locator services (SPLS);~~
- ~~(13) The NCP is a citizen and resident of a foreign country, and:~~
 - ~~(a) NCP has no assets which can be reached by DCS; and~~
 - ~~(b) The country where NCP resides does not provide reciprocity in child support matters.~~
- ~~(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or~~
- ~~(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation))~~ WAC 388-14A-2083 discusses closure of an intergovernmental case, which is what we call a case where the application for services was made to the child support enforcement agency of another state, tribe, territory, country or political subdivision thereof, which then requested support enforcement services from DCS.

NEW SECTION

WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? When the application for services was made directly to the division of child support (DCS) by one of the parties, including when DCS opened the case as the result of an application for public assistance in the state of Washington, the case must remain open unless DCS determines that:

- (1) There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;
- (2) The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;
- (3) The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:
 - (a) Institutionalized in a psychiatric facility;
 - (b) Incarcerated without possibility of parole; or
 - (c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.
- (4) The applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;
- (5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;
- (6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;
- (7) DCS is unable to contact the applicant or recipient of services for at least sixty days;
- (8) DCS or the prosecutor documents failure to cooperate by the custodial parent (CP), and that cooperation is essential for the next step in enforcement;
- (9) DCS cannot obtain a paternity order because:
 - (a) The putative father is dead;
 - (b) Genetic testing has excluded all putative fathers;
 - (c) The child is at least eighteen years old;
 - (d) DCS, or the prosecutor, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or
 - (e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.
- (10) DCS, or the prosecutor, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);
- (11) DCS, or the prosecutor, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;
- (12) DCS has provided locate-only services in response to a request for state parent locator services (SPLS);

(13) The NCP is a citizen and resident of a foreign country, and:

- (a) NCP has no assets which can be reached by DCS; and
- (b) The country where NCP resides does not provide reciprocity in child support matters.

(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or

(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation.

NEW SECTION

WAC 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? (1) When the application for services was originally made by a party to the child support enforcement agency of another state, tribe, territory, country or political subdivision thereof, which then requested support enforcement services from the division of child support (DCS), DCS keeps the case open until:

(a) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that its case is closed.

(b) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that it no longer wants DCS to provide services.

(c) DCS documents failure to cooperate by the initiating jurisdiction, and that cooperation is essential for the next step in enforcement.

(2) DCS calls this type of case an "intergovernmental case."

(a) The state, tribe, territory, country or political subdivision thereof which referred the case to DCS is called the "initiating jurisdiction."

(b) In these cases, DCS is the "responding jurisdiction."

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 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? (1) The division of child support (DCS) may deny a request to close a support enforcement case when:

(a) There is a current assignment of support or medical rights on behalf of the children in the case;

(b) There is accrued debt under a support order which has been assigned to the state;

(c) Support or medical rights on behalf of the children have previously been assigned to the state; or

(d) The person who requests closure is not the recipient of support enforcement services ~~((or~~

~~((a superior court order requires payments to the Washington state support registry (WSSR))).~~

(2) If DCS is the responding jurisdiction in an intergovernmental case DCS cannot deny a request from the initiating jurisdiction to close the intergovernmental portion of a DCS case.

(3) If there is no current assignment of support or medical rights, DCS may close the portion of the case which is owed to the custodial parent (CP), but if there is accrued debt under a support order which has been assigned to the state, DCS keeps that portion of the case open.

~~((3))~~ (4) If a superior court order specifies that the non-custodial parent (NCP) must make payments to the WSSR, but the CP does not want support enforcement services, DCS ~~((keeps the case open as))~~ changes the case status to a payment services only (PSO) case, which means that:

(a) DCS provides payment processing and records maintenance, and

(b) DCS does not provide enforcement services.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2090 Who ~~((is mailed))~~ receives notice ~~((of DCS' intent to close))~~ when DCS closes a case? (1) ~~((Sixty days before closing a case the division of child support (DCS) sends a notice of intent to close, advising the parties why DCS is closing the case.~~

~~((a) DCS does not send a notice when closing a case under WAC 388-14A-2080 (11) or (12).~~

~~((b) DCS does not provide sixty days' prior notice when closing a case under WAC 388-14A-2080(4))~~ The reason for case closure determines whether the division of child support (DCS):

(a) Sends a notice of intent to close;

(b) Sends a notice of case closure; or

(c) Notifies the other jurisdiction.

(2) DCS mails a notice of intent to close by regular mail to the last known address of the custodial parent (CP) and the noncustodial parent.

(3) ~~((In an interstate case, DCS mails the notice to the CP by regular mail in care of the other state's child support agency))~~ If DCS is closing a case under WAC 388-14A-2081, DCS sends a notice of intent to close, advising the parties why DCS is closing the case. DCS sends the notice sixty days before closing the case, except:

(a) DCS sends a notice of case closure but does not send a notice of intent to close when the applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(b) DCS notifies the initiating jurisdiction in an intergovernmental case that DCS has closed the case after the initiating jurisdiction requests case closure; and

(c) DCS does not send a notice of intent to close or a notice of case closure when:

(i) DCS, the prosecuting attorney, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the custodial parent (CP); or

(ii) DCS has provided locate-only services in response to a request for state parent locator services (SPLS).

(4) If DCS is the responding jurisdiction and is closing an ~~((interstate))~~ intergovernmental case because of noncooperation by the initiating jurisdiction, DCS ~~((also mails the~~

~~notice to~~) notifies the other state's child support agency sixty days before closing the case.

(5) When DCS is the initiating jurisdiction in an intergovernmental case and DCS closes its case, DCS notifies the responding jurisdiction that DCS has closed its case and provides the reason for closure.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2097 What happens to payments that come in after a case is closed? After support enforcement services are terminated, the division of child support (DCS) returns support money to the noncustodial parent except if the case remains open as a payment services only (PSO) case as described in WAC 388-14A-2000(1).

(2) If DCS, as the initiating jurisdiction in an intergovernmental case, closed a case without notifying the responding jurisdiction, DCS must attempt to locate the custodial parent (CP) and disburse any payments the CP is entitled to receive.

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.

AMENDATORY SECTION (Amending WSR 06-06-076, filed 2/28/06, effective 3/31/06)

WAC 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? (1) ~~((When a consumer reporting agency, sometimes called a credit bureau, requests information regarding the amount of overdue support owed by a noncustodial parent (NCP), the division of child support (DCS) provides this information))~~ Under 42 USC §666(7), the division of child support (DCS) may report to consumer reporting agencies the name of any noncustodial parent (NCP) who is delinquent in support and the amount of overdue support owed by that parent. Consumer reporting agencies are sometimes also called credit bureaus.

~~(2) ((In addition to responding to requests for information by consumer reporting agencies))~~ Once DCS has reported an NCP to the credit bureaus, DCS ((reports to those agencies information regarding overdue support owed by an NCP. DCS then)) updates the information on a regular basis as long as DCS continues to enforce the support order, even after the NCP brings the account current.

(3) Before releasing information to the consumer reporting agency, DCS sends a written notice to the NCP's last known address concerning the proposed release of the information ~~((to the NCP's last known address)).~~

(4) The notice gives the NCP ten days from the date of the notice to request a conference board under WAC 388-14A-6400 to contest the accuracy of the information. If the NCP requests a conference board, DCS does not release the information until a conference board decision has been issued.

(5) ~~((A noncustodial parent (NCP)))~~ An NCP who disagrees with the information supplied by DCS to a consumer

reporting agency or credit bureau may file a notice of dispute under the federal Fair Credit Reporting Act, 15 USC 1681.

(6) For interstate or intergovernmental cases, either the initiating jurisdiction or the responding jurisdiction, or both may report the NCP's debt to the credit bureaus.

AMENDATORY SECTION (Amending WSR 02-06-098, filed 3/4/02, effective 4/4/02)

WAC 388-14A-3130 What happens if a ((parent)) party makes a timely request for hearing on a support establishment notice? (1) A timely request for hearing is an objection made within the time limits of WAC 388-14A-3110. For late (or untimely) hearing requests, see WAC 388-14A-3135.

(2) If either parent makes a timely request for hearing, the division of child support (DCS) submits the hearing request to the office of administrative hearings (OAH) for scheduling.

(3) OAH sends a notice of hearing by first class mail to all parties at their address last known to DCS, notifying each party of the date, time and place of the hearing. DCS, the noncustodial parent (NCP), and the custodial parent are all parties to the hearing.

(4) A timely request for hearing stops the support establishment notice from becoming a final order, so DCS cannot collect on the notice. However, in appropriate circumstances, the administrative law judge (ALJ) may enter a temporary support order under WAC 388-14A-3850.

(5) A hearing on an objection to a support establishment notice is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 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. (1) The division of child support (DCS) may serve a notice of support debt and demand for payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the children in the case.

(c) When there are multiple current support orders for the same obligor and children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support

debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, or within sixty days of service of the notice outside of Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) ~~((A notice of support debt and demand for payment served in another state becomes final according to WAC 388-14A-7200))~~ RCW 26.21A.515 controls the calculation of the debt on a notice of support debt and demand for payment.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt and demand for payment on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt and demand for payment; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection ~~((9))~~ (8)(b) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection ~~((8))~~ (7) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment? Once the division of child support has served a notice of support debt and demand for payment, either party may disagree with the notice.

(1) If either party objects to the enforcement of a non-Washington support order, that party may request that DCS register that order under chapter 26.21A RCW. DCS then serves a notice of support debt and registration as provided in WAC ~~((388-14A-7110))~~ 388-14A-7100.

(2) If the noncustodial parent (NCP) objects to the amount of current support or the amount of support debt stated in the notice, the NCP may request a conference board under WAC 388-14A-6400.

(a) The custodial parent (CP) may participate in the conference board under this section.

(b) The CP may choose to convert the proceeding to an administrative hearing. The NCP may participate in a hearing held under this section.

(3) If the custodial parent objects to the amount of current support or the amount of support debt stated in the notice, the CP may request an administrative hearing. The NCP may participate in a hearing held under this section.

(4) See WAC 388-14A-3304 for a more full description of the hearing process on the notice of support debt and demand for payment.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears? (1) After service of a notice of support debt and demand for payment as provided in WAC 388-14A-3304, the final administrative order determines the support debt as of the date of the order, and:

(a) The debt determination is not a final determination under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) ~~((Any party may request that a tribunal determine any amounts owed as interest on the support debt))~~ RCW 26.21A.515 controls in any computation and/or determination of accrued interest on arrearages under the support order.

(2) The final administrative order comes about by:

- (a) Operation of law if nobody objects to the notice;
- (b) Agreed settlement or consent order under WAC 388-14A-3600;
- (c) Final conference board decision under WAC 388-14A-6400;
- (d) Final administrative order entered after hearing or a party's failure to appear for hearing.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children? When more than one current child support order exists for the same obligor and children, the division of child support (DCS) may proceed as follows:

(1) When not acting as a responding jurisdiction, DCS decides whether or not a determination of controlling order is necessary, and which state has the authority to make a determination of controlling order (DCO) under UIFSA.

(2) Using the criteria listed in RCW 26.21A.130, DCS ~~((decides))~~ may decide which child support order it should enforce and ~~((serves))~~ may serve a notice of support debt and demand for payment under WAC 388-14A-3304.

(2) ~~((If DCS decides that a determination of controlling order under chapter 26.21A RCW is required))~~ When a party objects to enforcement of the order selected for enforcement under subsection (1) of this section, or when the order that DCS decides to enforce is not the order presented by a party or another jurisdiction for enforcement of current support, DCS ~~((serves))~~ may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

(3) ~~((Upon request, DCS may do a determination of controlling order (DCO).~~

~~((a) See))~~ WAC 388-14A-7305 ~~((for))~~ describes how ~~((you))~~ either party or the initiating jurisdiction can ask for a DCO.

~~((b) See))~~ (4) WAC 388-14A-7315 ~~((for))~~ describes how DCS decides whether ~~((or not))~~ to ~~((do))~~ deny a request for a DCO.

~~((4))~~ (5) If DCS ~~((does))~~ reviews the orders in response to a request for a DCO and decides that a Washington order is the presumed controlling order, DCS refers the case to superior court.

~~((5))~~ (6) If DCS ~~((does))~~ reviews the orders in response to a request for a DCO and decides that a non-Washington order is the presumed controlling order, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7325.

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.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7100 The division of child support may register an order from another state for enforcement or modification. (1) A support enforcement agency, or a

party to a child support order or an income-withholding order for support issued by a tribunal of another state or jurisdiction, may register the order in this state for enforcement pursuant to chapter 26.21A RCW.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state or jurisdiction is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state or jurisdiction in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state or jurisdiction. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state or jurisdiction may register the order in this state according to RCW 26.21A.540 through 26.21A.550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state or jurisdiction registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered order is governed by RCW 26.21A.515.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7305 How ~~((do I))~~ does a party, IV-D agency or jurisdiction ask ~~((DCS to do))~~ for a determination of controlling order? (1) When there are multiple current support orders covering the same obligor and the same children, a party to a support order may request that the division of child support (DCS) make a determination of controlling order under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

(2) When another state's IV-D agency or another jurisdiction has identified that there are multiple support orders in existence and DCS has personal jurisdiction over both of the parties to the orders, the IV-D agency or jurisdiction may request a determination of controlling order from DCS.

(3) A request for a determination of controlling order may be made at any time, unless there has already been a determination of controlling order for the same obligor and children.

~~((3))~~ (4) DCS can provide a form which contains all the required elements for a request for determination of controlling order. A request for a determination of controlling order:

(a) Must be in writing;

(b) Must contain copies of any child support orders known to the requesting party. DCS waives this requirement if DCS has a true copy of the order on file; and

(c) ~~((State the reason the requesting party thinks DCS is enforcing the wrong))~~ Must identify the order that the requesting party believes should be the controlling order.

~~((4))~~ (5) A request for determination of controlling order does not constitute a petition for modification of a support order.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7325 How does DCS notify the parties ~~((of its))~~ that a determination of the controlling order is going to be made? (1) When the division of child support (DCS) decides that a determination of controlling order is required, or when a party, IV-D agency or jurisdiction asks for a determination of controlling order, DCS reviews the multiple child support orders for the same obligor and children to determine which order should be enforced.

(a) If DCS decides that the order that should be enforced is a Washington order, ~~((we immediately))~~ DCS refers the matter to the superior court for a determination of controlling order proceeding under chapter 26.21A RCW.

(b) If ~~((we))~~ DCS decides that the order that should be enforced is an order which was not entered in the state of Washington, DCS follows the procedures set out in subsections (2) through (4) of this section.

(2) DCS serves a notice of support debt and registration ~~((NOSDR))~~ as provided in WAC 388-14A-7100. DCS serves the ~~((NOSDR))~~ notice of support debt and registration on the obligor, the obligee, and on all identified interested parties. The ~~((NOSDR))~~ notice of support debt and registration includes a determination of controlling order.

(3) DCS serves the notice of support debt and registration on ~~((the nonrequesting))~~ a party who did not request the determination of controlling order by certified mail, return receipt requested, or by personal service.

(4) DCS serves the notice on the ~~((requesting))~~ party who requested the determination of controlling order and on any other identified interested parties by first class mail to the last known address.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 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? (1) If any party, IV-D agency or jurisdiction objects to the ~~((proposed))~~ determination of presumed controlling order issued under WAC 388-14A-7325, that objection must be in writing and signed under penalty of perjury. The division of child support (DCS) provides an objection form with the notice of support debt and registration.

(2) ~~((The))~~ An objection to the determination of presumed controlling order must contain:

(a) The reason the party, IV-D agency or jurisdiction objects ~~((to the determination of controlling order))~~. Examples of reasons to object include, but are not limited to:

(i) There is another order that was not considered in making the determination;

(ii) The alleged controlling order has been vacated, suspended or modified by a later order, which is attached to the objection;

(iii) The issuing tribunal lacked personal jurisdiction over the nonpetitioning party;

(iv) The order was obtained by fraud; or

(v) Any other legal defense available under chapter 26.21A RCW.

(b) A copy of the order which the party, IV-D agency or jurisdiction believes should be the controlling order, if that order was not included with the notice.

(c) A statement of facts in support of the ((party's)) objection.

((2)) (3) When DCS receives an objection to the proposed determination of controlling order, DCS refers the objection to the prosecuting attorney or attorney general to bring an action for determination of controlling order under RCW 26.21A.130 in the superior court.

WSR 11-09-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-52—Filed April 6, 2011, 2:41 p.m., effective April 6, 2011, 2:41 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23500W; and amending WAC 220-56-235.

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: These rules were adopted by the fish and wildlife commission at their February 4, 2011, meeting and are necessary to protect bottomfish resources in the area east of the Bonilla-Tatoosh line while allowing harvest of healthy stocks of bottomfish. A permanent rule for bottomfish retention limits east of the Bonilla-Tatoosh line was filed with an effective date of April 24, 2011. The date should have been May 1, 2011, to correspond to the advertised date of implementation.

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 6, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-23500X Possession limits—Bottomfish.

Notwithstanding the provisions of WAC 220-56-235, effective immediately until further notice, it is unlawful for any person to take in any day more than the following quantities of bottomfish in waters of Marine Areas 1, 2, 3 and 4:

(1) 12 bottomfish species per day. The 12 fish in the aggregate limit of all species and species groups of bottomfish may include no more than 2 cabezon per person per day in addition to current daily sub limits for rockfish (10) and lingcod (2).

(2) Effective April 24 through April 30, 2011, east of the Bonilla-Tatoosh line - 15 fish in the aggregate.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-23500W Possession limits—Bottomfish. (11-15)

WSR 11-09-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-55—Filed April 7, 2011, 9:37 a.m., effective April 8, 2011]

Effective Date of Rule: April 8, 2011.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (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 232-28-61900Z; and amending WAC 232-28-619.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife 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: Reopens the spring recreational salmon season in the Columbia River in the area downstream of Bonneville Dam. Chinook remain available on the preupdate harvest guideline. Continues to stipulate that the hatchery adult bag limit in Deep River is consistent with the adjacent Columbia River when both areas are open. Continues to include rules that prohibit filleting of fish in the field and full removal of nonlegal fish from the water. Maintains the angling closure in the area of Sand Island slough. Regulation is consistent with guidance from Washington fish and wildlife commission and director and joint state action of February 8 and April 6, 2011. 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. There is insufficient time to adopt 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 7, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Columbia River:**

i. From a true north-south line through Buoy 10 to a true north/south line projected from Rooster Rock on the Oregon shore to the Washington shoreline: Effective April 8 through April 15, 2011, fishing for salmonids and shad is open. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook.

ii. From a true north/south line projected from Rooster Rock on the Oregon shore to the Washington shoreline upstream to 600 feet below the fish ladder at the new Bonneville Dam powerhouse: Effective April 8 through April 15, 2011, closed to fishing for salmonids and shad from boats. Open to fishing for salmonids and shad from the bank only. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook.

iii. From Tower Island power lines in Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations): Effective immediately through April 24, 2011: daily salmonid limit is 6 fish, (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook.

iv. Effective immediately through June 15, 2011: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

v. Effective immediately until further notice: On the mainstem Columbia River below Bonneville Dam, anglers may not possess in the field fish mutilated so that size, species or fin clip cannot be determined until anglers have reached their automobile or principle means of land transportation and have completed their daily angling.

vi. Effective immediately through April 30, 2011, all angling is prohibited from a line between the upstream end of Sand Island, located east of Rooster Rock State Park on the Columbia River, to a marker on the Oregon shore, downstream to a line between the lower end of Sand Island and a marker on the Oregon shore

2. Deep River (Wahkiakum Co.): Effective immediately through June 15, 2011: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

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 April 8, 2011:

WAC 232-28-61900Z Exceptions to statewide rules—Columbia River. (11-25)

WSR 11-09-004 EMERGENCY RULES BUILDING CODE COUNCIL

[Filed April 7, 2011, 10:30 a.m., effective April 7, 2011, 10:30 a.m.]

Effective Date of Rule: Immediately.

Purpose: To further extend the emergency declaration filed under WSR 11-01-067.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0907, 51-51-0315, and 51-54-0900.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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

Reasons for this Finding: Rules regarding installation of carbon monoxide alarms in residential settings are currently scheduled to go into effect on January 1, 2011 (statutory requirement), for new construction, and July 1, 2011, for existing units. The implementation date for existing units is not a statutory mandate, and may cause financial hardship on certain industries; additional time is needed to consider ways to mitigate or eliminate the economic impacts, without compromising public safety. Adoption of this emergency rule will eliminate the upcoming requirements for installation of CO alarms in existing dwelling units in 2011, and allow time for further consideration of stakeholder economic interests and alternative amendments.

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 3, Repealed 0.

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

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

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

Date Adopted: April 7, 2011.

Kristyn Clayton
Chair

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

[F] 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in Sections 907.2.8.1 through 907.2.8.4.

[F] 907.2.8.4. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed (~~by January 1, 2011,~~) outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units (~~In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~) within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

[F] 907.2.8.4.1 Existing sleeping units. Existing sleeping units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by (~~July 1, 2011~~) January 1, 2013.

[F] 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

[F] 907.2.9.3. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed (~~by January 1, 2011,~~) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units (~~In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~) within which fuel-fired appliances are installed and in dwelling units that have attached garages.

[F] 907.2.9.3.1 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

907.2.9.3.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

[F] 907.2.10.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~(-In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed and in dwelling units that have attached garages.

[F] 907.2.10.2 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

[F] 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

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

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

WAC 51-51-0315 Section R315—Carbon monoxide alarms.

R315.1 Carbon Monoxide Alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~(-In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed and in dwelling units that have attached garages.

R315.2 Existing Dwellings. Existing dwellings within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

EXCEPTION: Owner-occupied detached one-family dwellings legally occupied prior to July 1, 2010.

R315.3 Alarm Requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and

shall be installed in accordance with this code and the manufacturer's installation instructions.

AMENDATORY SECTION (Amending WSR 10-03-100, filed 1/20/10, effective 7/1/10)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

ALERT SIGNAL. See Section 402.1.

ALERTING SYSTEM. See Section 402.1.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:

1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (465 m²); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION:

Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

903.6.3 Nightclub. Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

SECTION 906—PORTABLE FIRE EXTINGUISHERS

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.

6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

SECTION 907—FIRE ALARM AND DETECTION SYSTEMS

[F] 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

[F] 907.2.8.4(5) Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in dwelling units that have attached garages.

[F] 907.2.8.4.1 Existing sleeping units. Existing sleeping units shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

[F] 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

~~((907.2.9.1))~~ **[F] 907.2.9.1.1 Group R-2 boarding homes.** A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

[F] 907.2.9.3 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in dwelling units that have attached garages.

[F] 907.2.9.3.1 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

[F] 907.2.9.3.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

[F] 907.2.10.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in dwelling units that have attached garages.

[F] 907.2.10.2 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

[F] 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

SECTION 915 ALERTING SYSTEMS

915.1 General. An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

915.2 Power source. Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

915.3 Duration of Operation. The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

915.4 Combination system. Alerting system components and equipment shall be allowed to be used for other purposes.

915.4.1 System priority. The alerting system use shall take precedence over any other use.

915.4.2 Fire alarm system. Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

915.4.2.1 Signal priority. Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

915.4.2.2 Temporary deactivation. Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

915.4.2.3 Supervisory signal. Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.

915.5 Audibility. Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

915.6 Visibility. Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

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

vent potential conflict [with] other ongoing fisheries, closure of the green sea urchin fishery in Districts 6 and 7 is warranted. Harvestable amounts of red and green sea urchins exist in the other areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the District 3 (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 7, 2011.

Joe Stohr
for Philip Anderson
Director

WSR 11-09-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-56—Filed April 7, 2011, 3:30 p.m., effective April 7, 2011, 3:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-073.

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: In Sea Urchin Districts 6 and 7, comprising the South/Central Puget Sound Management Area, there has been no green sea urchin harvest activity for the duration of the 2010-2011 management period. To pre-

NEW SECTION

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

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, and 4 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4 are open seven days-per-week.

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

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

WSR 11-09-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-57—Filed April 12, 2011, 3:14 p.m., effective April 20, 2011]

Effective Date of Rule: April 20, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900S; 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 predicted 198,400 upriver spring chinook return allows for fishing opportunities in the Snake River within Washington. Expectations are for approximately 66,000 hatchery chinook to return to the Snake River. 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 12, 2011.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective April 20 through May 31, 2011, a person may fish for and possess salmon in waters of the Snake River from the South Bound Highway 12 Bridge at Pasco, upstream about 7 miles to the fishing restriction boundary approximately 400 ft. below Ice Harbor Dam. Daily limit of two adult hatchery Chinook, plus four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(2) Effective April 25 through May 31, 2011, a person may fish for and possess salmon in the following waters of the Snake River:

(a) From the Railroad Bridge about 0.5 miles downstream of the Tucannon River mouth, up about 9 miles to the Army Corps of Engineers boat launch (approximately 1 mile upstream of Little Goose Dam along the south shore). This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the Wall" in front of the juvenile collection facility).

(b) From the intersection of Steptoe Canyon Road with Hwy 193 (Snake River Road) in Whitman County, upriver about 12 miles to the Idaho state line that runs from the north termination of the rock levee on the east side of the Greenbelt boat launch (near the US Army Corps of Engineers Office) northwest across the Snake River to the Idaho/Washington marker on the north shore in Whitman County.

(i) Daily limit of two adult hatchery Chinook and four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(ii) However, when fishing along the "wall" and walkway area upstream of the juvenile fish bypass return pipe below Little Goose Dam, the daily limit is one adult hatchery Chinook and one jack salmon. May continue to fish until the daily adult limit is retained. Minimum size for Chinook is 12 inches in length.

(iii) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(iv) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(v) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(vi) Night closure is in effect for salmon and sturgeon.

REPEALER

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

WAC 232-28-61900S Exceptions to statewide
 rules—Snake River.

WSR 11-09-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-60—Filed April 12, 2011, 3:15 p.m., effective April 12, 2011,
 3:15 p.m.]

Effective Date of Rule: Immediately.

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 both clam and oyster populations have declined on Scenic Beach State Park, necessitating a closure in 2011. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 12, 2011.

NEW SECTION

WAC 220-56-35000N 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:

Scenic Beach State Park: CLOSED until further notice.

NEW SECTION

WAC 220-56-38000W 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:

Scenic Beach State Park: CLOSED until further notice.

WSR 11-09-022

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-062—Filed April 12, 2011, 3:29 p.m., effective April 12, 2011, 3:29 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this emergency rule is to change the season close date for the Kapowsin hunt area from May 15 to June 15.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-28600D; and amending WAC 232-28-286.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.150, 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 emergency rule changes the season closing date for the Kapowsin area from May 15 to June 15, 2011. The change warrants emergency rule action because without a longer season, bear damage to trees will exceed the landowner's tolerance thresholds. The commission's adopted permanent rule that is effective for the 2012 season already uses this June 15 end date. This emergency rule is needed for the 2011 spring season.

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 12, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-28600D 2010, 2011, and 2012 Spring black bear seasons and regulations. Notwithstanding the provisions of WAC 232-28-286, effective immediately until further notice, under the Kapowsin^a hunt, the season dates are April 15-June 15 for 2011.

REPEALER

The following section of the Washington Administrative Code is repealed on June 16, 2011:

WAC 232-28-28600D 2010, 2011, and 2012 Spring black bear seasons and regulations.

**WSR 11-09-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-63—Filed April 13, 2011, 5:03 p.m., effective April 19, 2011, 12:01 a.m.]

Effective Date of Rule: April 19, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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 13, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000S Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it

is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. April 19 through 11:59 a.m. April 22, 2011, 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. Effective 12:01 a.m. April 21 through 11:59 a.m. April 22, 2011, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

3. Effective 12:01 a.m. April 23 through 12:59 p.m. April 23, 2011, razor clam digging is allowed in Razor Clam Area 1, Razor Clam Area 2 and that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 12:59 p.m. that day only.

4. 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. April 23, 2011:

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

**WSR 11-09-029
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed April 14, 2011, 8:48 a.m., effective April 14, 2011, 8:48 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing to amend by emergency adoption WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.

The department is reducing the cash assistance grant maximum to \$726 effective May 1, 2011, which will affect households with more than five members.

These changes are necessary to address a growing Work-First budget shortfall driven by increased demand for services by families affected by the economic recession, as described in the "WorkFirst Reductions" announcement dated March 4, 2011.

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

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, and 74.08.-090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: The department needs to make further reductions to TANF-related programs in order to achieve a balanced WorkFirst budget for the current fiscal year (which ends June 30, 2011) and the 2011-13 biennium (which begins July 1, 2011). This shortfall is the result of increased demand for TANF benefits due to the economic recession. In the last two years, the WorkFirst caseload has grown by more than thirty percent, from 51,106 cases in July 2008 to 66,634 cases in June of this year.

In September 2010, the governor directed agencies to implement cuts by October 1 to avoid running out of state general funds to address a growing WorkFirst budget shortfall. In particular, the Governor's Executive Order 10-04 (Ordering Expenditure Reductions in Allotments of State General Fund Appropriations), signed on September 13, 2010, found that:

- Revenues have fallen short of projections;
- The current official state economic and revenue forecast of general fund revenues is less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund are insufficient to meet anticipated expenditures from this fund for the remainder of the current fiscal period.

Accordingly, the governor ordered across-the-board reductions of state general fund allotments by 6.287 percent, effective October 1, 2010.

In November 2010, the departments announced further reductions to keep the WorkFirst budget in balanced [balance]. The projected WorkFirst deficit reached approximately \$82 million for current fiscal year and \$225 million for the next biennium.

In December 2010:

- During December 11, 2010, special session, HB 3225 approved by legislature modified appropriations for the 2009-11 operating budget. The state general fund appropriations were reduced by \$490.4 million, while the total budgeted amount was reduced by \$336.5 million. The department appropriations included a reduction of \$856,000 GF-S for the remaining of SFY 2011.
- December 15, 2010, Governor Gregoire announced proposed 2011-2013 budget cuts needed to close an additional \$4.6 billion projected shortfall in the next state fiscal biennium, and proposed eliminating or

restructuring many state programs, agencies, boards and commissions. "We face unprecedented times," the governor said. "Few alive today have witnessed a recession of this magnitude and length." See the governor's proposed budget for SFY 2011-2013 at this link http://www.governor.wa.gov/priorities/budget/press_packet.pdf.

In March 2011, the WorkFirst subcabinet announced alternate TANF reductions to achieve the \$12.5 million in savings that would have been achieved with a proposed limit to new child care assistance entrants. The alternate reductions were a result of conversations with key legislative members and stakeholders to preserve working connections child care for low-income working families. The alternate TANF reductions included this and seven other changes related to child care assistance reductions, WorkFirst participation requirements, changes to the child support pass through, reduced funding to WorkFirst partner agencies and a transfer of funds. Emergency rule making is necessary because cost savings cannot be achieved during the remainder of FY 2011 under permanent rule making.

The timing of the proposed budget reductions will lessen the adverse impact on families. If immediate budget reductions are not realized, the department will have to make additional cuts in the future to TANF/WorkFirst assistance programs to stay within budget. Additional cuts could include greater reduction in services than those currently proposed, and/or eliminating benefits rather than reducing them. These reductions would have a much greater detrimental effect on vulnerable families with children in need.

The department is concurrently working on the permanent rule-making process.

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

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

Date Adopted: April 13, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-134, filed 10/20/08, effective 10/28/08)

WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on

assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

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

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

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.

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

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

(4) Effective May 1, 2011, the monthly cash assistance grant for an assistance unit ((containing eight or more persons)) cannot exceed ((the grant maximum payment standard for a family of eight listed in WAC 388-478-0020(1))) seven hundred and twenty-six dollars.

WSR 11-09-031

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed April 14, 2011, 9:31 a.m., effective April 14, 2011, 9:31 a.m.]

Effective Date of Rule: Immediately.

Purpose: The legislature passed ESHB 1086, which authorized the department of social and health services to place long-term care clients residing in nursing homes and paid for with state-only funds into less restrictive community care settings while continuing to meet the client's care needs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-438-0125.

Statutory Authority for Adoption: Chapter 5, Laws of 2011, ESHB 1086.

Other Authority: RCW 74.08.090.

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

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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: April 13, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-085, filed 9/17/10, effective 10/18/10)

WAC 388-438-0125 ((~~Alien nursing facility~~)) State-funded long-term care services program ((~~state-funded~~)). (1) The state-funded ((~~alien nursing facility~~)) long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and disability services administration (ADSA) that caseload limits will not be exceeded as a result of the authorization.

(2) Long-term care services are defined in this section as services provided in one of the following facilities:

(a) Nursing facility, as defined in WAC 388-97-0001;

(b) Adult family home, as defined in RCW 70.128.010;

(c) Assisted living facility, as described in WAC 388-513-1301;

(d) Enhanced adult residential care facility, as described in WAC 388-513-1301;

(e) Adult residential care facility, as described in WAC 388-513-1301.

(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (e) of this section unless nursing facility care is required to sustain life.

(4) To be eligible for the state-funded ((~~alien nursing facility~~)) long-term care services program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a), (b), (e), and (f);

(b) Reside in ((~~a nursing facility as defined in WAC 388-97-0001~~)) one of the settings described in subsection (2) of this section;

(c) Attain institutional status as described in WAC 388-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;

(e) Not have a penalty period due to a transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366;

(f) Not have equity interest in a primary residence of more than five hundred thousand dollars as described in WAC 388-513-1350; and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter 388-561 WAC.

~~((3))~~ (5) An adult who is related to the supplemental security income (SSI) program as described in WAC 388-475-0050 (1), (2), and (3) must meet the financial requirements described in WAC 388-513-1325, 388-513-1330, and 388-513-1350.

~~((4))~~ (6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC 388-505-0250 or 388-505-0255.

~~((5))~~ (7) An adult who is not eligible for the state-funded ~~((alien nursing facility))~~ long-term care services program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

(a) WAC 388-513-1395 for adults related to SSI; or

(b) WAC 388-505-0255 for adults related to family institutional medical.

~~((6))~~ (8) All adults qualifying for the state-funded ~~((alien nursing facility))~~ long-term care program will receive CN scope of medical coverage described in WAC 388-501-0060.

~~((7))~~ (9) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual residing in a nursing home, see rules described in WAC 388-513-1380.

(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC 388-515-1509.

(c) For an individual eligible under the family institutional program, see WAC 388-505-0265.

~~((8))~~ (10) A person is not eligible for state-funded nursing facility care if that person entered the state specifically to obtain medical care.

~~((9))~~ (11) A person eligible for the state-funded ~~((alien nursing facility))~~ long-term care program is certified for a twelve month period.

WSR 11-09-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-64—Filed April 14, 2011, 3:49 p.m., effective April 14, 2011,
3:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: The 2011 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and North Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule opens the Regions 1 and 3 beam trawl fishery 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: April 14, 2011.

Philip Anderson
Director

NEW SECTION

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

(1) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) will open at 7:00 a.m. April 16, 2011, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait will open at 7:00 a.m. May 1, 2011, until further notice.

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

WSR 11-09-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-65—Filed April 15, 2011, 8:23 a.m., effective April 16, 2011]

Effective Date of Rule: April 16, 2011.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia

River while protecting fish listed as threatened or endangered under the Endangered Species Act (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 232-28-61900Q; and amending WAC 232-28-619.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Extends the spring chinook sport fishery for an additional four days in the area below Bonneville Dam. Chinook remain available on the preupdate harvest guideline. Continues to stipulate that the hatchery adult bag limit in Deep River is consistent with the adjacent Columbia River when both areas are open. Continues to include rules that prohibit filleting of fish in the field and full removal of nonlegal fish from the water. Maintains the angling closure in the area of Sand Island slough. Regulation is consistent with guidance from Washington fish and wildlife commission and director and joint state action of February 8 and April 14, 2011. 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. There is insufficient time to adopt 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 15, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Columbia River:**

i. From a true north-south line through Buoy 10 to a true north/south line projected from Rooster Rock on the Oregon shore to the Washington shoreline: Effective April 16 through April 19, 2011, fishing for salmonids and shad is open. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook.

ii. From a true north/south line projected from Rooster Rock on the Oregon shore to the Washington shoreline upstream to 600 feet below the fish ladder at the new Bonneville Dam powerhouse: Effective April 16 through April 19, 2011, closed to fishing for salmonids and shad from boats. Open to fishing for salmonids and shad from the bank only. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook.

iii. From Tower Island power lines in Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations): Effective immediately through April 24, 2011: daily salmonid limit is 6 fish, (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook.

iv. Effective immediately through June 15, 2011: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

v. Effective immediately until further notice: On the mainstem Columbia River below Bonneville Dam, anglers may not possess in the field fish mutilated so that size, species or fin clip cannot be determined until anglers have reached their automobile or principle means of land transportation and have completed their daily angling.

vi. Effective immediately through April 30, 2011, all angling is prohibited from a line between the upstream end of Sand Island, located east of Rooster Rock State Park on the Columbia River, to a marker on the Oregon shore, downstream to a line between the lower end of Sand Island and a marker on the Oregon shore

2. **Deep River (Wahkiakum Co.):** Effective immediately through June 15, 2011: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

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 April 16, 2011:

WAC 232-28-61900Q	Exceptions to statewide rules—Columbia River. (11-55)
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**WSR 11-09-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-58—Filed April 15, 2011, 12:02 p.m., effective April 20, 2011]

Effective Date of Rule: April 20, 2011.
Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900W; 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: A kids fishing event is planned for April 23 and a closure to the general public is needed to ensure adequate numbers of fish are available for the kids fishing day. Hood Park Pond will be closed to the general public on April 20 through 22 and open only to juvenile anglers (under age fifteen) during April 23. The pond reopens to the general public on April 24. 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 15, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Hood Park Pond. Notwithstanding the provisions of WAC 232-28-610, effective April 20 through April 23, 2011, it is unlawful to fish in waters of Hood Park Pond, except open to juvenile anglers 8:00 a.m. through 1:00 p.m. on April 23, 2011.

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 April 24, 2011:

WAC 232-28-61900W	Exceptions to statewide rules—Hood Park Pond.
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WSR 11-09-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-59—Filed April 15, 2011, 12:56 p.m., effective April 15, 2011,
 12:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H; 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: Sets the May-July white sturgeon retention season for the below Wauna sport fishery. The regulation is consistent with Washington fish and wildlife commission guidance for 2011 lower Columbia River sturgeon management. The dates for retention of white sturgeon are based on actions adopted at the joint Washington-Oregon public hearing on February 8, 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 15, 2011.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900X 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 immediately 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.

(3) Effective May 1 until further notice, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.

(4) Effective May 1 until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries, except a person may retain white sturgeon from May 14 through June 26 and from July 1 through July 4. Minimum size when open to retain white sturgeon in this area is 41 inches fork length May 14 through June 26 and July 1 through July 4.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900H	Exceptions to statewide rules—Columbia River sturgeon. (11-53)
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WSR 11-09-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-68—Filed April 15, 2011, 1:47 p.m., effective April 15, 2011,
 1:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-35000N and 220-56-38000W; and 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 both clam and oyster populations have declined on Scenic Beach State Park, necessitating a closure in 2011. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: April 15, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-35000P 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:

Scenic Beach State Park: CLOSED until further notice.

NEW SECTION

WAC 220-56-38000X 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:

Scenic Beach State Park: CLOSED until further notice.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-35000N	Clams other than razor clams—Areas and seasons. (11-60)
WAC 220-56-38000W	Oysters—Areas and seasons. (11-60)

WSR 11-09-044

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed April 15, 2011, 2:06 p.m., effective April 15, 2011, 2:06 p.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 246-887-100, the rule adds the chemicals JWH-018, JWH-073, JWH-200, CP-47,497, cannabicyclohexanol, methylmethcathinone, methylenedioxypropylvalerone, methylenedioxymethylcathinone, methylbenzodioxolylpropylamine, and fluoromethcathinone to Schedule I. Schedule I substances have a high potential for abuse and no accepted medical use. The rule makes it illegal to sell or possess these chemicals or products containing these substances.

Citation of Existing Rules Affected by this Order: Amending WAC 246-887-100.

Statutory Authority for Adoption: RCW 69.50.201(a), 69.50.203.

Other Authority: RCW 18.64.005(7).

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: By adding these chemicals to Schedule I of the controlled substances list, the board of pharmacy identifies these substances as having a high potential for abuse with no medical use. The rule gives law enforcement clear authority to prosecute for the sale, possession, manufacture, or delivery of these substances and is consistent with the direction from the DEA.

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

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

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

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

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

Date Adopted: April 15, 2011.

A.J. Linggi, RPH
Board Chair

AMENDATORY SECTION (Amending WSR 01-03-108, filed 1/22/01, effective 1/22/01)

WAC 246-887-100 Schedule I. The board finds that the following substances have high potential for abuse and have no accepted medical use in treatment in the United States or that they lack accepted safety for use in treatment under medical supervision. The board, therefore, places each of the following substances in Schedule I.

(a) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;

(4) ~~Alphacetylmethadol; ((except for levo-alpha-acetylmethadol - also known as levo-alpha-acetylmethadol, levo-methadyl acetate or LAAM);))~~ Alphacetylmethadol - also known as levo-alpha-acetylmethadol, levo-methadyl acetate or LAAM);

(5) Alphameprodine;
 (6) Alphamethadol;
 (7) Alpha-methylfentanyl (N-[1-alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(8) Benzethidine;
 (9) Betacetylmethadol;
 (10) Betameprodine;
 (11) Betamethadol;
 (12) Betaprodine;
 (13) Clonitazene;
 (14) Dextromoramide;
 (15) Diampromide;
 (16) Diethylthiambutene;
 (17) Difenoxy;
 (18) Dimenoxadol;
 (19) Dimepheptanol;
 (20) Dimethylthiambutene;
 (21) Dioxaphetyl butyrate;
 (22) Dipipanone;
 (23) Ethylmethylthiambutene;
 (24) Etonitazene;
 (25) Etoxidine;
 (26) Furethidine;
 (27) Gamma-hydroxybutyric Acid (other names include:

GHB);
 (28) Hydroxypethidine;
 (29) Ketobemidone;
 (30) Levomoramide;
 (31) Levophenacymorphan;
 (32) 3-Methylfentanyl (N-[3-Methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
 (33) Morpheridine;
 (34) MPPP (1-Methyl-4-phenyl-4-propionoxypiperidine);

(35) Noracymethadol;
 (36) Norlevorphanol;
 (37) Normethadone;
 (38) Norpipanone;
 (39) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(40) Phenadoxone;
 (41) Phenampromide;
 (42) Phenomorphan;
 (43) Phenoperidine;
 (44) Piritramide;
 (45) Proheptazine;
 (46) Properidine;
 (47) Propiram;
 (48) Racemoramide;
 (49) Tilidine;
 (50) Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, when-

ever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of paragraph (d) of this section, only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;

(2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;

(3) 2,5-dimethoxy-4-ethylamphetamine (DOET)

(4) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;

(5) 5-methoxy-3,4-methylenedioxy-amphetamine;

(6) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";

(7) 3,4-methylenedioxy amphetamine;

(8) 3,4-methylenedioxymethamphetamine (MDMA);

(9) 3,4,5-trimethoxy amphetamine;

(10) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(11) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(12) Dimethyltryptamine: Some trade or other names: DMT;

(13) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(14) Lysergic acid diethylamide;

(15) Marihuana;

(16) Mescaline;

(17) Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(18) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 USC § 812 (c), Schedule I (c)(12))

(19) N-ethyl-3-piperidyl benzilate;

(20) N-methyl-3-piperidyl benzilate;

(21) Psilocybin;

(22) Psilocyn;

(23) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extracts of *Cannabis*, sp., and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 - cis - or transtetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 - cis - or transtetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis - or transtetrahydrocannabinol, and its optical isomers;

(iv) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7297 (Other names: CP-47,497);

(v) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7298 (Other names: Cannabicyclohexanol and CP-47,497 C8 homologue);

(vi) 1-Butyl-3-(1-naphthoyl)indole-7173 (Other names: JWH-073);

(vii) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole-7200 (Other names: JWH-200);

(viii) 1-Pentyl-3-(1-naphthoyl)indole-7118 (Other names: JWH-018 and AM678).

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(24) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(25) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(26) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thenyl]-cyclohexyl)-piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP;

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Mecloqualone;

(ii) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

((+)) (1) Cathinone (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);

((+)) (i) Fluoromethcathinone (Flephedrone);

(ii) Methylbenzodioxolylpropylamine (Butylone);

(iii) Methylenedioxyethylcathinone (Methylone);

(iv) Methylenedioxypropylvalerone (MDPV); and

(v) Methylmethcathinone (Mephedrone);

(2) Fenethylamine;

((+)) (3) N-ethylamphetamine;

((+)) (4) 4-methylaminorex;

((+)) (5) N,N-dimethylamphetamine.

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

WSR 11-09-074

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-61—Filed April 19, 2011, 2:21 p.m., effective May 1, 2011]

Effective Date of Rule: May 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule conforms to federal action taken by the Pacific Fisheries Management Council. The recreational halibut quota is sufficient to provide for these seasons. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 19, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500B Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open May 5, 2011, until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2** - Open May 1, 2011, until further notice, Sundays and Tuesdays only, except closed Tuesday, May 24, 2011; see (i) and (ii) below for additional details.

(i) Catch Record Card Area 2 (Northern Nearshore fishery) Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open May 1, 2011, seven days per week until further notice:

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

47° 58.00 N. lat, 124° 24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open May 12 through May 21, 2011, Thursdays and Saturdays only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(4) **Catch Record Card Area 5** - Open May 26 through June 18, 2011, Thursdays through Saturdays only. However,

May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open May 5 through May 29, 2011, Thursdays through Saturdays only. However, May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(6) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

WSR 11-09-075

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-67—Filed April 19, 2011, 2:22 p.m., effective May 1, 2011]

Effective Date of Rule: May 1, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

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

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

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

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

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

Date Adopted: April 19, 2011.

Philip Anderson
Director

NEW SECTION

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

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open: May 1 through June 30, 2011.

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

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

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

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

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

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

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

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

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

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

WSR 11-09-076**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-70—Filed April 19, 2011, 2:23 p.m., effective April 19, 2011, 2:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100I and 220-52-07100J; 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: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Imposing daily landing limits to the one day opening in District 1 ensures that the area harvest quota share is not exceeded. The 2010-2011 sea cucumber harvest management period concludes after Saturday, April 30, 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 2.

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

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

Date Adopted: April 19, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100J Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately 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 1 on Tuesday, April 26, 2011, only. The maximum daily landing of sea cucumbers allowed in Sea Cucumber District 1 is 500 pounds per valid designated sea cucumber harvest vessel.

(2) 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:

WAC 220-52-07100I Sea cucumbers. (11-49)

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. April 30, 2011:

WAC 220-52-07100J Sea cucumbers.

lected at the time of licensing. This has left many out-of-state trainers with the perception that Washington's "license fees" are some of the highest in the nation. While this is not the case, the perception has kept trainers from running in Washington, jeopardizing the overall welfare of Washington equine industry. In response immediate action is needed to change this perception and encourage horsemen to bring their horses to Washington. Current economic conditions coupled with fewer horses participating in live horse racing make it critical that immediate action is taken to preserve the general welfare of the state's equine industry.

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 2, 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 2, 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 19, 2011.

Douglas L. Moore
Deputy Secretary

WSR 11-09-077

EMERGENCY RULES

HORSE RACING COMMISSION

[Filed April 19, 2011, 4:42 p.m., effective April 19, 2011, 4:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 260-36-220 and 260-36-230 to extend the period of short duration license at Class A and B racing associations from seven to thirty day[s] in an attempt to attract more trainers and horses to run in Washington. This action is being taken at the specific request of the Washington Horsemen's Benevolent and Protective Association, the industry group representing those this amendment would affect, and therefore is exempt from the limitations of EO 10-06.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-220 and 260-36-230.

Statutory Authority for Adoption: RCW 67.16.020.

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 Washington horse racing commission is required by law (RCW 67.16.300) to collect industrial insurance premiums required by RCW 51.16.210. These premiums are tied to the participants' license and col-

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-220 Industrial insurance premiums—Additional premiums for exercise riders. (1) At the time of licensing, and as provided in this section and WAC 260-36-230, a trainer must pay the annual industrial insurance premiums for exercise riders established by labor and industries, unless exempted under WAC 260-36-240. Coverage will only apply to licensed exercise riders exercising horses for a licensed trainer and for trainers, also licensed as exercise riders, exercising any of the horses in their care. It is the trainer's responsibility to ensure all exercise riders in their employ are properly licensed by the commission.

(2)(a) A trainer at a Class A or B track must pay all required annual industrial insurance premiums for exercise riders equal to the maximum number of horses in training on any given day during the calendar year that the trainer has both on and off the grounds of a racing association.

(b) For horses on the grounds of a Class A or B track, a trainer must count stalls that are occupied by horses (including horses that are sick or injured) under the trainer's care. Premiums will be calculated on the total number of stalls allotted by the racing association, even if the horse is stalled on the grounds for a day or less. (For example, if a trainer comes to Washington to enter or nominate his/her horse in one race and the horse is only on the grounds for one day, the trainer is required to pay the full industrial insurance premium for that one horse, except as provided in WAC 260-36-

230.) Stalls assigned to and occupied by pony horses will not be counted.

(c) For horses off the grounds, a trainer must count all horses in training that are subject to being ridden by licensed exercise riders, if the exercise riders are to be covered by the Washington labor and industries insurance under the horse industry account.

(d) If any trainer increases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is responsible to pay the additional premiums as provided in this section.

(e) If any trainer decreases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is not entitled to any refund as premiums are annual fees that are not prorated and are assessed on the maximum number of horses in training on any day during the calendar year.

(f) It is the trainer's responsibility to maintain records and accurately report the number of horses in training (both on and off the grounds) for purposes of paying industrial insurance premiums required by this section. Any time during the calendar year if a trainer increases the number of horses in training or racing beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

(3)(a) A trainer at a Class C track must pay industrial insurance premiums for exercise riders equal to the maximum number of different horses the trainer starts at the Class C tracks during the calendar year, or the maximum number of horses the trainer has in training, whichever is greater. All trainers at a Class C track are required to pay industrial insurance for at least one horse.

(b) If during the calendar year a horse is started by more than one trainer that horse, for the purpose of calculating the annual industrial insurance premium a trainer is required to pay, will count as a different horse for each trainer.

(c) It is the trainer's responsibility to maintain records and accurately report the number of different horses started or in training for the purpose of paying industrial insurance premiums required in this section. Any time during the calendar year if a trainer increases the number of different horses started or the total number of horses in training beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-230 Short duration industrial insurance coverage. (1) ~~((Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the trainer's base premium and the groom and/or assistant trainer slot(s). The reduced premiums for short duration coverage will not apply to the additional premiums required to cover exercise riders as provided in WAC 260-36-220. The following conditions will apply for short duration coverage:~~

~~(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for~~

~~seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent for each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class A or B race meets. A trainer may only purchase Class A or B race meet short duration coverage for three seven-day periods per calendar year.)) Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the amount of industrial insurance premium a trainer has to pay to provide employees financial relief from injury. The following conditions will apply for short duration coverage:~~

~~(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for thirty consecutive calendar days. The cost of short duration coverage will be no more than:~~

~~(i) One-third of the trainer base premium;~~

~~(ii) One-third for each groom slot or assistant trainer slot obtained; and~~

~~(iii) One-third of the premiums for exercise riders for all horses on the grounds (all rounded to the next whole dollar). The premiums used for these calculations will be the industrial insurance premiums established for Class A or B race meets. Trainers may only purchase Class A or B race meet short duration coverage for two, thirty-day periods per calendar year. The trainer must pay the industrial insurance premium at the time of licensing. If a trainer extends coverage past the initial thirty-day period, the trainer must pay:~~

~~(A) One-third of the trainer base premium;~~

~~(B) One-third of all groom/assistant trainer slots; and~~

~~(C) One-third of the premium for exercise riders based on the maximum number of horses on the grounds prior to a consecutive extension of coverage. Prior to the end of each thirty-day coverage period a trainer must pay one-third of the premium for any additional groom/assistant trainer slots and one-third of the premium for exercise riders for any additional horses brought on the grounds.~~

(b) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The ~~((trainer must pay))~~ cost of such short duration coverage will be twenty percent of the trainer base premium, and twenty percent of each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class C race meets. A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.

(2) Before short duration coverage will be allowed, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission.