

WSR 05-18-034
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 30, 2005, 3:54 p.m., effective September 1, 2005]

Effective Date of Rule: September 1, 2005.

Purpose: The Division of Child Support (DCS) seeks to clarify its rules regarding when a claim for child support starts as a result of the family receiving Medicaid or medical-only assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-2005, 388-14A-2025, 388-14A-2035, 388-14A-2036, 388-14A-2040, and 388-14A-3350.

Statutory Authority for Adoption: RCW 74.20A.310.

Other Authority: 45 C.F.R. 302.31, 302.33.

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: DCS's federal funding depends on compliance with the state plan under Title IV-D of the Social Security Act, which requires that the state have in place procedures and laws regarding opening a full support enforcement services case when a family begins to receive Medicaid assistance. It has come to our attention that our WAC does not specifically cover these cases and is subject to an interpretation which would make it impossible for DCS to base a claim for support on the opening of a Medicaid case. DCS seeks to clear up any confusion in the rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 7, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: August 18, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-14-101, filed 6/30/05, effective 7/31/05)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"**Absence of a court order**" means that there is no court order setting a support obligation for the noncustodial parent

(NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"**Absent parent**" is a term used for a noncustodial parent.

"**Accessible coverage**" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"**Accrued debt**" means past-due child support which has not been paid.

"**Administrative order**" means a determination, finding, decree or order for support issued under RCW 74.20A.-055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"**Agency**" means the Title IV-D provider of a state. In Washington, this is DCS.

"**Agreed settlement**" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"**Aid**" or "**public assistance**" means cash assistance under the temporary assistance for needy families (TANF) program, the aid for families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"**Alternate recipient**" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"**Applicant/custodian**" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"**Applicant/recipient**," "**applicant**," and "**recipient**" means a person who receives public assistance on behalf of a child or children residing in their household.

"**Arrears**" means the debt amount owed for a period of time before the current month.

"**Assistance**" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"**Birth costs**" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"**Conference board**" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"**Consent order**" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

"Department" means the Washington state department of social and health services (DSHS).

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs":

(1) For the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, means medical, dental and optometrical expenses; and

(2) For the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical, dental and optometrical costs stated as a fixed dollar amount by a support order.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic

care, preventive care, mental health care, and physical therapy.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/Me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical support" means either or both:

- (1) Health care costs stated as a fixed dollar amount in a support order; and
- (2) Health insurance coverage for a dependent child.

"National Medical Support Notice" or **"NMSN"** is a federally-mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. Also called the NCP. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrearages" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;
 - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;
 - (c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or
 - (d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.
- (4) Referral to the state or federal parent locator service;
- (5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;
- (6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or
- (7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including health care costs, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, medical support, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, health care costs, birth costs, and child care or special child rearing expenses.

"Temporarily assigned arrearages" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy

families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

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

WAC 388-14A-2005 When does an application for public assistance automatically become an application for support enforcement services? (1) When a custodial parent (CP) or physical custodian (also called the CP) applies for or receives cash assistance on behalf of a minor child, the family authorizes the division of child support (DCS) to provide full support enforcement services to the family.

(2) These services continue until the support enforcement case is closed under WAC 388-14A-2080.

(3) The CP's public assistance application is an assignment of support rights.

(4) An application for Medicaid, medical assistance or medical benefits under Title XIX of the federal Social Security Act is an assignment of the medical support rights of anyone receiving those benefits, and the CP authorizes DCS to provide support enforcement services to the family as follows:

(a) DCS provides full support enforcement services as provided under subsection (1) above for a family receiving cash assistance, or under WAC 388-14A-2000 (2)(d) to a family receiving Medicaid-only benefits;

(b) As set forth in WAC 388-14A-2000(3), DCS provides only payment processing, records maintenance, paternity establishment, medical support establishment and medical support enforcement services when a recipient of Medic-

aid-only benefits declines full support enforcement services in writing.

~~(5)~~ WAC 388-14A-2036 describes the assignment of support rights.

~~((5))~~ ~~(6)~~ If the community services office grants the CP good cause not to cooperate under WAC 388-422-0020, DCS does not provide services. See WAC 388-14A-2065.

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

WAC 388-14A-2025 What services does the division of child support provide for a nonassistance support enforcement case? (1) The division of child support (DCS) provides full support enforcement services for every IV-D case.

(2) DCS provides either full or limited nonassistance support enforcement services for recipients of Medicaid-only benefits as provided in WAC 388-14A-2005(4).

(3) Some cases do not receive full support enforcement services. Nonassistance cases where DCS provides payment processing services are called payment services only (PSO) cases.

~~((3))~~ (4) In a PSO case, DCS provides only records maintenance and payment processing services if the payee under a support order does not submit an application for support enforcement services and the:

(a) Order directs support payments to DCS or to the Washington state support registry (WSSR); and

(b) The clerk of the court submitted the order under RCW 26.23.050.

~~((4))~~ (5) DCS continues to provide services without an application after a:

(a) Public assistance recipient stops receiving cash assistance; or

(b) Recipient of Medicaid-only benefits becomes ineligible for Medicaid-only benefits, unless the recipient declines support enforcement services or requests additional services.

~~((5))~~ (6) If you receive services as a former recipient of assistance, as described in subsection ~~((4))~~ (5), you must cooperate with DCS in the same way as when you received a grant.

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

WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance? (1) When you receive public assistance you assign your rights to support to the state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

(4) When you receive Medicaid or medical benefits, you assign your rights to medical support to the state. This applies to all recipients of medical assistance under the state program funded under Title XIX of the federal Social Security Act.

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

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(2) While your family receives assistance, all support collected is retained by the state to reimburse the total amount of assistance which has been paid to your family.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assign to the state all rights to support which accrued before the application date and which will accrue prior to the date your family terminates from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assign to the state all rights to support which accrue while your family receives assistance; and

(ii) You temporarily assign to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminates from assistance, whichever date is later. After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

(c) For assistance applications dated on or after October 1, 2000:

(i) You permanently assign to the state all rights to support which accrue while the family receives assistance; and

(ii) You temporarily assign to the state all rights to support which accrued before the application date, until the date your family terminates from assistance. After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support? (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate

under WAC 388-422-0020. For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who receives assistance must cooperate whether or not the parent receives assistance.

(2) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

- (a) Identify and locate the responsible parent;
- (b) Establish the paternity of the child(ren) on assistance in the CP's care; and
- (c) Establish or collect support payments or resources such as property due the CP or the child(ren).

(3) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

(4) The cooperation requirements of subsections (1) and (2) above, but not subsection (3), apply to a recipient of Medicaid-only assistance.

AMENDATORY SECTION (Amending WSR 05-14-099, filed 6/30/05, effective 7/31/05)

WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish? (1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of child support (DCS) starts the claim for support as of the date:

- (a) DCS receives the application for nonassistance services if the CP applies directly to DCS for services; or
- (b) Another state or Indian tribe received the application for nonassistance services or the actual date the other state or tribe requests that child support start, whichever is later, if the other state or Indian tribe requests DCS to establish a support order.

(2) When the children are receiving Medicaid-only benefits, DCS starts the claim for support as of the date the Medicaid benefits began. See WAC 388-14A-2005(4) to determine whether DCS seeks to establish medical support only for a particular case.

(3) This section does not limit in any way the right of the court to order payment for back support as provided in RCW 26.26.130 and 26.26.134 if the case requires paternity establishment.

~~((3))~~ (4) When another state or an Indian tribe is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the other state or tribe.

~~((4))~~ (5) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

~~((5))~~ (6) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time;

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

~~((6))~~ (7) The limitation in subsection ~~((5))~~ (6) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

- (b) Cases where parentage is an issue and:
 - (i) Has not been established by superior court order; or
 - (ii) Is not the subject of a presumption under RCW 26.26.320.

~~((7))~~ (8) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

WSR 05-19-001

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 05-203—Filed September 7, 2005, 4:48 p.m., effective September 9, 2005, 12:01 a.m.]

Effective Date of Rule: September 9, 2005, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-62000B; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Ocean Area 1 is significantly over its historic catch level of chinook. Chinook nonretention in Ocean Area 1 will help allow all four ocean areas to stay open for a longer period of time and allow more angling opportunity. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 7, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-62000C Coastal salmon seasons Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m., September 9, 2005, until further notice, it is unlawful to fish for salmon in coastal waters during 2005 except as provided in this section, provided that unless otherwise amended all permanent rules remain in effect:

(1) **Area 1** - Open through September 30, 2005, open 7 days per week, daily limit 2 salmon, except release wild coho and all chinook.

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

(a) **Area 2** - Open through September 18, 2005, open 7 days per week, daily limit 2 salmon, except release wild coho.

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

(b) **Area 2-1** - Open until further notice, daily limit 6 salmon, not more than two of which may be adult salmon.

(c) **Area 2-2** west of the Buoy 13 line - Closed.

(3) **Area 3** - Open through September 18, 2005, open 7 days per week, daily limit 2 salmon, except release wild coho.

(4) **Area 4** - Open through September 18, 2005, open 7 days per week, daily limit 2 salmon, except release chum and wild coho, release chinook east of the Bonilla-Tatoosh Line.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 9, 2005:

WAC 232-28-62000B Coastal salmon seasons. (05-194)

WSR 05-19-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-204—Filed September 7, 2005, 4:49 p.m., effective September 7, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Enough commercial spot shrimp quota remains in several areas to allow a thirty hour fishery with reduced trip limits in those areas. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 7, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, Crustacean Management Regions 2, 3, 4 and 6, are open to the harvest of all shrimp species, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Areas 23A-C, 23A-E, 23A-W, 26B, all shrimp districts except Port Townsend Bay, and that portion of Area

25D south of 48.06 North latitude, north of 48.04 North latitude, and east of the 122.46 West longitude line, except as provided for in this section:

a. Marine Fish/Shellfish Management and Catch Reporting Area 23A-C (central) is open for spot shrimp effective 7:00 a.m. September 8, 2005 through 1:00 p.m., September 9, 2005, with a 110 pound weekly limit.

b. Marine Fish/Shellfish Management and Catch Reporting Area 23A-E (east) is open for spot shrimp effective 7:00 a.m. September 8, 2005 through 1:00 p.m., September 9, 2005, with a 210 pound weekly limit.

c. Marine Fish/Shellfish Management and Catch Reporting Area 23A-W (west) is open for spot shrimp effective 7:00 a.m. September 8, 2005 through 1:00 p.m., September 9, 2005, with a 130 pound weekly limit.

d. Marine Fish/Shellfish Management and Catch Reporting Area 26B-2 is open for spot shrimp effective 7:00 a.m. September 8, 2005 through 1:00 p.m., September 9, 2005, with a 210 pound weekly limit.

ii) It is unlawful to harvest spot shrimp for commercial purposes in Shrimp Management Area 1B, 1C, 2-E, 2-W, and Marine Fish/Shellfish Management and Catch Reporting Areas 23A-S, 23B, 23C, 25A, 25D and 26D, except as provided for in this section:

a. Shrimp Management Area 1C is open for spot shrimp effective 7:00 a.m. September 8, 2005 through 1:00 p.m., September 9, 2005, with a 75 pound weekly limit.

b. Shrimp Management Area 2-W (west) are open for spot shrimp effective 7:00 a.m. September 8, 2005 through 1:00 p.m., September 9, 2005, with a 270 pound weekly limit.

c. Marine Fish/Shellfish Management and Catch Reporting Area 23B is open for spot shrimp effective 7:00 a.m. September 8, 2005 through 1:00 p.m., September 9, 2005, with a 150 pound weekly limit.

iii) Until further notice, it is unlawful for the combined harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week from Marine Fish/Shellfish Management and Catch Reporting Areas 23D or Crustacean Management Region 6.

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

(c) Any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Management and Catch Reporting Area 29, shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of spot shrimp harvested from the previous trip limit accounting week or weeks. It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information. The number of pots being moved to a new area and the Marine Fish-Shellfish Manage-

ment and Catch Reporting Area to which the pots are being moved.

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

(e) For purposes of shrimp harvest allocation, fishing season, and catch reporting, Marine Fish-Shellfish Management and Catch Reporting Area 23A is divided into four sub-areas: 23A-E (east) is those waters of Catch Area 23A north of a line projected 48.22.50°N latitude east of a line projected 122.57°W longitude. 23A-W (west) is those waters of Catch Area 23A north of a line projected 48.22.50°N latitude and west of a line projected 122.57°W longitude. 23A-C (central) is those waters of Catch Area 23A south of a line projected 48.22.50°N latitude and east of a line projected 335 degrees true from the Dungeness lighthouse. 23A-S (south) is those waters of Catch Area 23A west of a line projected 335 degrees true from the Dungeness lighthouse.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts and Marine Fish/Shellfish Management and Catch Reporting Area 20A are open immediately, until further notice.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Areas 21A and 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

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:

WAC 220-52-05100C	Puget Sound shrimp pot and beam trawl fishery—Season (05-198)
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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 05-19-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-205—Filed September 8, 2005, 4:46 p.m., effective September 8, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100U; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The commercial harvest target of sea cucumbers for 2005 has been taken. 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: September 9 [8], 2005.

J. P. Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100U Sea cucumbers. (05-193)

WSR 05-19-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-206—Filed September 9, 2005, 10:34 a.m., effective September 9, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-48-01500X; and amending WAC 220-48-015.

Statutory Authority for Adoption: RCW 77.12.047.

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

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

Reasons for this Finding: Harvestable amounts of Pacific cod quota remain to allow for commercial harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 220-48-01500X Beam trawl and bottom trawl seasons. Notwithstanding the provisions of WAC 220-48-015, effective 12:01 September 15 through December 31, 2005, it is lawful to fish for and possess bottomfish taken with bottom trawl and beam trawl gear in Marine Fish-shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 22A and 22B in waters deeper than 40 fathoms.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2006:

WAC 220-48-01500X Beam trawl and bottom trawl seasons.

WSR 05-19-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-207—Filed September 9, 2005, 5:30 p.m., effective September 10, 2005, 6:01 p.m.]

Effective Date of Rule: September 10, 2005, 6:01 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

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

Reasons for this Finding: Sets additional tribal commercial fishing periods. Salmon and steelhead are available for harvest. Continues the commercial sale of platform and hook and line caught fish in the treaty Indian fishery, including Washington tributaries, consistent with Yakama Nation rules for those tributaries. Season is consistent with the 2005-2007 management agreement and the biological opinion. Consistent with action of the Columbia River compact of September 9, 2005, and conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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: September 9, 2005.

J. P. Koenings
Director

NEW SECTION

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

1) Open Periods: 6:00 a.m. September 12, 2005 to 6:00 p.m. September 16, 2005

a) Open Areas: SMCRA 1F, 1G, 1H

b) Gear: Gill Nets. 8-inch minimum mesh restriction. Drift gill nets up to 800 feet in length are allowed.

c) Allowable sale includes: salmon, steelhead, walleye, carp, and shad. Sturgeon may not be sold.

d) Sanctuaries: All standard dam and river mouth sanctuaries are in effect. The small 150 foot sanctuary around Spring Creek Hatchery will be in effect.

2) Open Periods: Immediately until further notice.

a) Open Areas: SMCRA 1F, 1G, 1H, the Klickitat River and the White Salmon River.

b) Gear: Hoop nets, dip bag nets, or hook and line.

c) Allowable sale includes: Salmon, steelhead, walleye, carp and shad. Commercial sales of platform and hook and line caught fish are allowed during commercial gillnet openings. Fish taken in the Klickitat and White Salmon rivers may be sold when those rivers are open pursuant to lawfully enacted tribal rules.

3) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

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

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

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

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

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

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

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

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

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

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

b. Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light

"1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

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

Reviser's note: The typographical 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 05-19-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-208—Filed September 9, 2005, 5:30 p.m., effective September 10, 2005, 8:00 a.m.]

Effective Date of Rule: September 10, 2005, 8:00 a.m.
Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100M; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This regulation provides for PSC authorized sockeye fisheries in Areas 7 and 7A. These fisheries are not expected to exceed chinook by-catch levels modeled during the preseason process. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-50100N Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

Purse Seines - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
5:00 a.m. to 9:00 p.m. daily if using a Recovery Box during all fishing activities throughout the entire open period	September 13 and 14
9:00 a.m. to 9:00 p.m. daily if NOT using a Recovery Box during all fishing activities throughout the entire open period	September 13 and 14

(i) It is unlawful to retain chinook, coho, and chum salmon

(ii) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net, meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water, except all salmon must be immediately sorted and those required to be released, must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(iii) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Areas 7 and 7A:

Gill Nets - Open to gill net gear with 5 inch minimum and 5 1/2 in maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
8:00 a.m. to 11:59 p.m.	September 13 and 14

(i) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
5:00 a.m. to 9:00 p.m. daily	September 13 and 14

It is unlawful to retain chinook salmon at all times, and it is unlawful to retain chum salmon and wild coho salmon

prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Areas 7B:

That portion of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy south-east of Point Francis (48°40'22"N, 122°35'30"W) then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W) then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W) and then southeastward along that line to Fish Point are closed 9/1-9/30.

Purse Seines - (a) Open in Area 7B to purse seines using the 5-inch strip during the following hours and dates, provided it is unlawful to retain sockeye salmon, and any sockeye salmon caught must be released immediately.

- 7:00 a.m. to 7:00 p.m. September 12, 13 and 14
- 7:00 a.m. September 18 to 8 p.m. October 29

Gill Nets - Open to gill nets as follows:

<u>Areas</u>	<u>Mesh Size</u>	<u>Hours</u>	<u>Dates</u>
7B	5" minimum	6:00 p.m. September 11 to 8:00 a.m. September 12 6:00 p.m. September 13 to 8:00 a.m. September 14 6:00 p.m. September 15 to 8:00 a.m. September 16.	
7B	5" minimum	7:00 p.m. September 18 through 8:00 p.m. October 29	

Area 9A:

Gill Nets - Open to gill nets using 5-inch minimum mesh as follows:

<u>Hours</u>	<u>Dates</u>
Continuously through 8:00 p.m.	October 29

It is unlawful to retain chum salmon in Area 9A prior to October 1 and unlawful to retain Chinook salmon at any time. Any salmon not to be retained must be released from the net by cutting the meshes ensnaring the fish.

Area 12A:

Skiff gill net - (a) Open to skiff gill nets using 5-inch minimum and 5 1/2-inch maximum mesh from 7:00 a.m. to 7:00 p.m. on the following dates: 9/14, 9/21, 9/28.

(b) It is unlawful to retain chinook or pink salmon taken in Area 12A at any time. Any salmon required to be released, must be removed from the net by cutting the meshes ensnaring the fish.

All Other Saltwater and Freshwater Areas: Closed.

"Quick Reporting" Fisheries: All fisheries opened under this section, and any fishery openings under authority of the Fraser Panel for sockeye or pink salmon in Areas 7 and 7A are designated as "Quick Reporting Required" fisheries.

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 8:00 a.m. September 10, 2005:

WAC 220-47-50100M Puget Sound all-citizen commercial salmon fishery. (05-202)

WSR 05-19-032

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 12, 2005, 4:32 p.m., effective September 12, 2005]

Effective Date of Rule: Immediately.

Purpose: To reinstate twelve-month continuous eligibility for children's medical. The governor has directed the Department of Social and Health Services to reinstate twelve-month continuous eligibility for the children's medical programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.530, and 74.09.415.

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: Observing the time requirements of regular rule-making procedures would prevent potentially eligible children from continuing on Medicaid. The permanent rule was proposed under WSR 05-16-126 on August 3, 2005, and will be adopted soon.

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: September 8, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-21-064, filed 10/18/04, effective 11/18/04)

WAC 388-416-0015 Certification periods for categorically needy (CN) medical and state children's health insurance program (SCHIP). (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families (~~and children~~) the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out of state or death. When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

~~((5))~~ (6) For an SSI-related person the certification period is twelve months.

~~((6))~~ (7) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

- (a) The child is receiving inpatient services on the last day of the month the child turns nineteen;
- (b) The inpatient stay continues into the following month or months; and
- (c) The child remains eligible except for exceeding age nineteen.

~~((7))~~ (8) A retroactive certification period can begin up to three months immediately before the month of application when:

- (a) The client would have been eligible for medical assistance if the client had applied; and
- (b) The client received covered medical services as described in WAC 388-529-0100.

~~((8))~~ (9) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

~~((9))~~ (10) Any months of a retroactive certification period are added to the designated certification periods described in this section.

~~((10))~~ (11) For a child determined eligible for SCHIP medical benefits as described in chapter 388-542 WAC:

- (a) The certification periods are described in subsections (1), ~~((4))~~ (5), and ~~((6))~~ (7) of this section;

(b) There is not a retroactive eligibility period as described in subsections ~~((7), (8), and (9))~~ (8), (9), and (10); and

(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the month after the child's creditable coverage is no longer in effect, if:

- (i) All other SCHIP eligibility factors are met; and
- (ii) An eligibility decision is made per WAC 388-406-0035.

WSR 05-19-038

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 05-209—Filed September 13, 2005, 3:32 p.m., effective October 1, 2005, 7:59 a.m.]

Effective Date of Rule: October 1, 2005, 7:59 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040, 220-52-046, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes which have been entered as required by court order. The pot limit for the commercial crab fishery in the Puget Sound licensing district is to maintain commercial harvest allocation plans. The quick-reporting requirement of commercial purchasers and receivers of Dungeness crab allows close monitoring of harvest-share completion in each region. There is insufficient time to promulgate permanent rule.

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 3, 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: September 12, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-0400M Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Dungeness crab pots may be deployed between 8:00 a.m. October 1, 2005 and 7:59 a.m. October 3, 2005 in Puget Sound waters from a vessel not designated on a persons Puget Sound crab license provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and provided prior notice has been given as indicated below.

(2) The license holder must leave a telephone message at the LaConner office, (360) 466-4345, extension 245, with the following information:

- a) Name and license number of license owner.
- b) Name of designated primary operator if different from license owner.
- c) Name of alternate operator if used to deploy pots from a non-designated vessel.
- d) Buoy brand number and number of pots to be deployed from a non-designated vessel.
- e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(3) Effective 8:00 a.m. October 1, 2005 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B. The remaining 50 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

(4) Effective 8:00 a.m. October 1, 2005 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 23D, 25A, 25E, 24A, 24B, 24C, 24D, and 26A-E. The remaining 25 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

NEW SECTION

WAC 220-52-04600D Crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046,

1) It will be lawful to fish for Dungeness crab for commercial purposes in the following areas:

(a) Effective 8:00 a.m. October 1, 2005 until further notice, those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A within a line that extends due north from the green number 1 buoy at Scatchet Head to Scatchet Head, thence from the green number 1 buoy at Scatchet Head to the green number 1 buoy at Possession Point, thence due north from the green number 1 buoy at Possession Point to Possession Point.

(b) Effective 8:00 a.m. October 16, 2005 until further notice, those waters of Marine Fish-Shellfish Management

and Catch Reporting Area 26A east and north of a line that extends from Possession Point to the green number 1 buoy at Possession Point thence following the 200 foot contour northward to a point due east from the Glendale Dock, thence extending due west to the Whidbey Island shore.

(c) Effective 8:00 a.m. October 1, 2005 until further notice, that portion of Marine Fish-Shellfish Catch Area 21B in Samish Bay south of a line from Fish Point and Point Williams in water deeper than 60 feet.

(d) Effective 8:00 a.m. October 1, 2005 until further notice, that portion of Catch Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo projected to the green #3 buoy at the mouth of the Snohomish River and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(2) The following area is closed to commercial crab fishing during the period indicated:

(a) Those waters of Marine Fish-Shellfish Catch Area 26A in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47° 58.782"N, 122° 30.84'W) projected 110° true to the boulder on shore (47° 57.690"N, 122° 26.742'W) are closed October 1 through October 15, 2005. Those same waters of Useless Bay, will be open to commercial crab fishing effective 8:00 a.m. October 16, 2005, until further notice.

(3) Effective 8:00 a.m. October 1, 2005 until further notice Marine Fish-Shellfish Management and Catch Reporting Area 26A shall be further defined by the following boundaries:

(a) Area 26A-W shall include those waters of Catch Area 26A southeast of a line from Foulweather Bluff to Double Bluff and northerly of a line from Apple Cove Point to Point Edwards and south and west of a line that extends from Possession Point to the Shipwreck located .8 nautical miles north of Picnic Point.

(b) Area 26A-E shall include those waters of Catch Area 26A south of Areas 24B and 24C and north and east of a line that extends from Possession Point to the Shipwreck located .8 nautical miles north of Picnic Point.

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

NEW SECTION

WAC 220-69-2400G Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made to the LaConner District Office by facsimile at (360) 466-0515 or by telephone number 1-866-859-8439 extension 500 and must specify the dealer name, dealer phone number, date of delivery of crabs to the original receiver, and the total number of pounds of crab caught by non-treaty fishers by Crustacean Management Region or Marine Fish-Shellfish Catch Area. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.

WSR 05-19-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-210—Filed September 14, 2005, 1:31 p.m., effective September 14, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500Y; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: There is sufficient quota to reopen the Columbia River recreational halibut fishery. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 13, 2005.

J. P. Koenings
 Director

NEW SECTION

WAC 220-56-25500Z Halibut—Seasons—Daily and possession limits. (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice it is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1 - Open September 15 through September 30, 2005. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2 - Closed, except lawful to retain halibut from 12:01 a.m. each Friday through 11:59 p.m. Saturday until further notice, in those waters south of Queets River (47 deg, 31.70'N lat.) to 47 deg, 00.00'N lat. and east of a line approximating 30 fathoms, as defined in the following coordinates:

- 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.;
- 46°52.94'N lat. 124°22.58'W long.;
- 46°44.18'N lat. 124°18.00'W long.;
- 46°38.17'N lat. 124°15.88'W long.

(c) Catch Record Card Areas 3 and 4 - Closed.

(2) Daily limit one halibut. No minimum size.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 220-56-25500Y Halibut—Seasons daily and possession limits. (05-184)

WSR 05-19-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-211—Filed September 14, 2005, 1:31 p.m., effective September 17, 2005, 12:01 a.m.]

Effective Date of Rule: September 17, 2005, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000C; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Angler effort has significantly decreased in Columbia River mouth and adjacent open ocean waters. As a result the Chinook remaining in the overall sport quota are enough to allow Chinook retention in Marine Area 1. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 13, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-62000D Coastal salmon seasons Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m., September 17, 2005, until further notice, it is unlawful to fish for salmon in coastal waters during 2005 except as provided in this section, provided that unless otherwise amended all permanent rules remain in effect:

(1) **Area 1** - Open through September 30, 2005, open 7 days per week, daily limit 2 salmon, except release wild coho.

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

(a) Area 2 - Open through September 18, 2005, open 7 days per week, daily limit 2 salmon, except release wild coho.

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

(b) Area 2-1 - Open until further notice, daily limit 6 salmon, not more than two of which may be adult salmon.

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

(3) **Area 3** - Open through September 18, 2005, open 7 days per week, daily limit 2 salmon, except release wild coho.

(4) **Area 4** - Open through September 18, 2005, open 7 days per week, daily limit 2 salmon, except release chum and wild coho, release chinook east of the Bonilla-Tatoosh Line.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 17, 2005:

WAC 232-28-62000C Coastal salmon seasons. (05-203)

WSR 05-19-044

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 15, 2005, 10:09 a.m., effective September 16, 2005]

Effective Date of Rule: September 16, 2005.

Purpose: The Division of Developmental Disabilities has received initial approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four

home and community based service (HCBS) waivers, which replaced the community alternatives program (CAP) waiver.

These rules will clarify eligibility, service array, utilization, provider qualifications, client appeal rights and access to services. This filing includes new chapter 388-845 WAC.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: The initial approval of the HCBS waivers by CMS required the department to implement new rules by April 1, 2004, to protect the health and welfare of eligible clients by ensuring no interruption in services to former participants in the CAP waiver, and to ensure a continuation of federal matching funds under 42 C.F.R. 441, Subpart G—Home and Community Based Services—Waiver Requirements. Emergency rules were originally filed as WSR 04-08-020, and were extended as WSR 04-16-019, 04-20-018, 05-04-020, and 05-12-026. The department has filed a notice of intent to adopt permanent rules as WSR 03-20-103. These rules are necessary to extend the emergency rules filed as WSR 05-12-026 while the proposed rules are adopted on a permanent basis. The proposed rule making was filed as WSR 05-17-055 on August 9, 2005, and the hearing is scheduled for October 11, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 131, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 131, Amended 0, Repealed 0.

Date Adopted: September 9, 2005.

Andy Fernando, Manager

Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-21 issue of the Register.

WSR 05-19-047
EMERGENCY RULES
STATE BOARD OF HEALTH

[Filed September 15, 2005, 11:17, effective September 15, 2005.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 246-272A-0130 Bacteriological reduction, to create a more accurate and less costly protocol for the testing of on-site sewage system proprietary treatment products. During the recent on-site rule revision process a protocol for demonstrating bacteriological reduction was adopted. However, this protocol has since been identified as being impractical for some testing facilities to complete. A suitable protocol is critical so that product manufacturers have clear direction as to the requirements for product registration.

Citation of Existing Rules Affected by this Order: Amending WAC 246-272A-0130.

Statutory Authority for Adoption: RCW 43.20.050.

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 State Board of Health finds that immediate amendment of WAC 246-272A-0130 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 would be contrary to the public interest because the protocol adopted and scheduled to go into effect on September 15, 2005:

- Is not consistent with the capabilities of some of the laboratories who would perform the testing due to the inability to have samples analyzed within the maximum holding times specified by standard methods;
 - Could result in a decreased level of accuracy and reliability that could potentially lead to public health concerns if products were installed whose testing results were incorrect;
 - Could lead to an increased potential of sample contamination due to a greater than needed number of samples and the samples being handled more frequently;
 - Is not consistent with protocols used by many other states. Thus, a manufacturer may make a significant investment only to find out that retesting must be done to have a product used in other states;
- And further finds that:
- Despite the Department of Health (DOH) actions to inform manufacturers and potential testing entities of the error and upcoming changes to the rules to rectify the error, manufacturers may have their product tested to the adopted protocol, possibly necessitating expensive retesting.
 - DOH discussion with both manufacturers and technical representatives of the primary testing laboratory (the sources for the adopted language) concluded that the adopted protocol provides less assurance of accuracy and reliability at an increased cost to the manufacturer.

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

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

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

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

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

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

Date Adopted: September 6, 2005.

Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

WAC 246-272A-0130 Bacteriological reduction. This section establishes the requirements for registering bacteriological reduction processes.

(1) Manufacturers shall, for the purpose of product registration as described in WAC 246-272A-0110 and 246-272A-0120 for meeting treatment levels A, B, or C, verify bacteriological reduction performance by sampling for fecal coliform.

(a) For products not yet tested according to ANSI/NSF Standard 40 testing protocol dated July 1996 or later, the requirements of both ANSI/NSF Standard 40 and the protocol specified in subsection (2) of this section for verifying bacteriological reduction must be met.

(b) For products that have been tested according to ANSI/NSF Standard 40 dated July 1996 or later but have not yet been tested for bacteriological reduction, treatment performance of the treatment product or sequence may be established based on test results for CBOD₅ and TSS obtained from the previous ANSI/NSF Standard 40 testing and bacteriological reduction performance based on testing according to the protocol in subsection (2) of this section. Provided that the testing entity must verify the influent wastewater stream throughout the bacteriological testing period meets the influent threshold levels for CBOD₅ and TSS required by ANSI/NSF Standard 40 testing protocol.

(2) All test data submitted for product registration shall be produced by an ANSI accredited, third-party testing and certification organization whose accreditation is specific to on-site wastewater treatment products. Bacteriological reduction performance must be determined while the treatment product or sequence is tested according to the ANSI/NSF Standard 40 testing protocol. During this testing the following requirements apply:

(a) Collect samples from both the influent and effluent streams, identifying the treatment performance achieved by the full treatment process (component or sequence);

(b) Obtain influent characteristics falling within a range of 10⁶ - 10⁸ fecal coliform/100 mL calculated as thirty-day geometric means during the test.

(c) Test the influent to any disinfection unit and report the following at each occasion of sampling performed in (d) of this subsection:

- (i) Flow rate;
- (ii) pH;
- (iii) Temperature;
- (iv) Turbidity; and
- (v) Color.

(d) Obtain samples for fecal coliform analysis throughout the testing period, including both design loading and stress loading recovery periods, as follows:

(i) Both an influent and an effluent grab sample must be ~~((taken during each of the three daily design loading periods))~~ collected and analyzed on three separate days of each week; and

(ii) Each of the three influent samples and three effluent samples collected ((each day must be combined and analyzed as a single sample for that day. The effluent samples for each day must also be combined and analyzed as a single sample for that day)) over the course of the week must be collected during a different daily design loading period so that there is an influent and effluent sample for each of the three loading periods identified by NSF Standard 40.

(e) Conduct analyses according to standard methods;

(f) Report the geometric mean of fecal coliform test results from all samples taken within thirty-day or monthly calendar periods;

(g) Report the individual results of all samples taken throughout the test period design and stress loading; and

(h) Report all maintenance and servicing conducted during the testing period, including for example, instances of cleaning a UV lamp, or replenishment of chlorine chemicals.

(3) Manufacturers may register products in treatment levels A and B using disinfection.

(4) Manufacturers may not register products for treatment level C using disinfection.

WSR 05-19-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-212—Filed September 15, 2005, 3:44 p.m., effective September 15, 2005, 8:00 p.m.]

Effective Date of Rule: September 15, 2005, 8:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.240.

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: As per the Puget Sound shrimp management plans all open spot shrimp fisheries must

close for the season to protect egg bearing female shrimp. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 14, 2005.

J. P. Koenings
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, Crustacean Management Regions 2, 3 and 6, are open to the harvest of shrimp species other than spot shrimp, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Areas 23A-C, 23A-E, 23A-W, all shrimp districts except Port Townsend Bay, that portion of Area 25D south of 48.06 North latitude, north of 48.04 North latitude, and east of the 122.46 West longitude line and 26B.

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

(c) It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of shrimp harvested from the previous trip limit accounting week or weeks. It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information. The number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area to which the pots are being moved.

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

(e) For purposes of shrimp harvest allocation, fishing season, and catch reporting, Marine Fish-Shellfish Management and Catch Reporting Area 23A is divided into four sub-areas: 23A-E (east) is those waters of Catch Area 23A north of a line projected 48.22.50' °N latitude east of a line projected 122.57 °W longitude. 23A-W (west) is those waters of Catch Area 23A north of a line projected 48.22.050' °N latitude and west of a line projected 122.57 °W longitude. 23A-C (central) is those waters of Catch Area 23A south of a line projected 48.22.050' °N latitude and east of a line projected 335 degrees true from the Dungeness lighthouse. 23A-S (south) is those waters of Catch Area 23A west of a line projected 335 degrees true from the Dungeness lighthouse.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts and Marine Fish/Shellfish Management and Catch Reporting Area 20A are open immediately, until further notice.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Areas 21A and 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

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 8:00 p.m. September 15, 2005:

WAC 220-52-05100D Puget Sound shrimp pot and beam trawl fishery—Season (05-204)

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 05-19-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-213—Filed September 15, 2005, 3:46 p.m., effective September 18, 2005, 12:01 a.m.]

Effective Date of Rule: September 18, 2005, 12:01 a.m.
Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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 Columbia River fall chinook runsize is below expectations and impacts of the ESA listed Snake River wild fall chinook allowed for the mainstem sport fishery are expected to be met. 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; and 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: September 15, 2005.

Lew Atkins for Larry Peck
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. September 18 through December 31, 2005, it is unlawful to retain chinook salmon in those waters of the Columbia River from the Rocky Point/Tongue Point line upstream to Bonneville Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2006:

WAC 232-28-61900V Exceptions to statewide rules—Columbia River.

WSR 05-19-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-215—Filed September 15, 2005, 3:47 p.m., effective September 15, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100C and 220-47-50100N; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.240.

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

Reasons for this Finding: This regulation provides for a two-day early opening of Area 6D based on approval from National Marine Fisheries. These fisheries are not expected to exceed chinook by-catch levels modeled during the pre-season process. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: September 15, 2005.

J. P. Koenings
 Director

NEW SECTION

WAC 220-47-41100C Gill net—Open periods. Notwithstanding the provisions of Chapter 220-47-411 WAC, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Area 6D except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section:

Area 6D:

Skiff gill net - (a) Open to skiff gill nets using 5-inch minimum and 5 1/2-inch maximum mesh from 7:00 a.m. to 7:00 p.m. Monday through Friday each week starting September 19 and continuing until further notice.

(b) It is unlawful to retain Chinook, chum or pink salmon taken in Area 6D at any time. Any salmon required to be released, must be removed from the net by cutting the meshes ensnaring the fish.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. September 16, 2005:

WAC 220-47-50100N Puget Sound all-citizen commercial salmon fishery. (05-208)

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. September 20, 2005:

WAC 220-47-41100C Gill net—Open periods.

WSR 05-19-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-214—Filed September 16, 2005, 3:41 p.m., effective September 16, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: These lakes are scheduled for rehabilitation utilizing rotenone. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: September 15, 2005.

J. P. Koenings
 Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Annex Lake #1, Annex Lake #2, Burke Lake, Green Lake, Lower Green Lake, Quincy Lake, Shay Pond, Spectacle Lake, Warden Lake and South Warden Lake. (1) Annex Lake #1 (Grant Co.) - Effective October 1, 2005 until further notice - Closed to fishing.

(2) Annex Lake #2 (Grant Co.) - Effective October 1, 2005 until further notice - Closed to fishing.

(3) Burke Lake (Grant Co.) Effective immediately through October 9, 2005, it is lawful to fish in those waters of Burke Lake. Size and daily limit for game fish: none. Effective October 10, 2005 until further notice - Closed to fishing.

(4) Green Lake (Okanogan Co.) - Effective immediately through October 9, 2005, size and daily limit for game fish: none. Catch and release and selective gear rules do not apply. Effective October 10, 2005 until further notice - Closed to fishing.

(5) Lower Green Lake (Okanogan Co) - Effective immediately through October 9, 2005, size and daily limit for game fish: none. Catch and release and selective gear rules do not apply. Effective October 10, 2005 until further notice - Closed to fishing.

(6) Quincy Lake (Grant Co.) - Effective immediately through October 9, 2005, it is lawful to fish in those waters of Quincy Lake. Size and daily limit for game fish: none. Effective October 10, 2005 until further notice - Closed to fishing.

(7) Shay Pond (Grant Co. - Effective October 1, 2005 until further notice - Closed to fishing.

(8) Spectacle Lake (Okanogan Co.) Effective immediately through October 16, 2005 size and daily limit for game fish: none. Effective October 17, 2005 until further notice - Closed to fishing.

(9) Warden Lake (Grant Co.) - Effective immediately through September 30, 2005 size and daily limit for game fish: none.

(10) Warden Lake, South (Grant Co.) Effective immediately through September 30, 2005 size and daily limit for game fish: none.

WSR 05-19-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-216—Filed September 16, 2005, 3:43 p.m., effective September 20, 2005, 8:00 p.m.]

Effective Date of Rule: September 20, 2005, 8:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.240.

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 pot fishery quota for non-spot shrimp has been taken in Crustacean Management Region 1. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2005.

J. P. Koenings
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Crustacean Management Regions 2, 3 and 6, are open to the harvest of shrimp species other than spot shrimp, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Areas 23A-C, 23A-E, 23A-W, all shrimp districts except Port Townsend Bay, that portion of Area 25D south of 48.06 North latitude, north of 48.04 North latitude, and east of the 122.46 West longitude line.

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

(c) It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of shrimp harvested from the previous trip limit accounting week or weeks. It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information. The number of pots being moved to a new area and the

Marine Fish-Shellfish Management and Catch Reporting Area to which the pots are being moved.

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

(e) For purposes of shrimp harvest allocation, fishing season, and catch reporting, Marine Fish-Shellfish Management and Catch Reporting Area 23A is divided into four sub-areas: 23A-E (east) is those waters of Catch Area 23A north of a line projected 48.22.50°N latitude east of a line projected 122.57°W longitude. 23A-W (west) is those waters of Catch Area 23A north of a line projected 48.22.50°N latitude and west of a line projected 122.57°W longitude. 23A-C (central) is those waters of Catch Area 23A south of a line projected 48.22.50°N latitude and east of a line projected 335 degrees true from the Dungeness lighthouse. 23A-S (south) is those waters of Catch Area 23A west of a line projected 335 degrees true from the Dungeness lighthouse.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts and Marine Fish/Shellfish Management and Catch Reporting Area 20A are open immediately, until further notice.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Areas 21A and 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

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 8:00 p.m. September 20, 2005:

WAC 220-52-05100E Puget Sound shrimp pot and beam trawl fishery—Season (05-212)

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 05-19-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-217—Filed September 16, 2005, 3:45 p.m., effective September 19, 2005, 6:00 a.m.]

Effective Date of Rule: September 19, 2005, 6:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Sets fifth week of tribal commercial fishing. Salmon and steelhead are available for harvest. Impacts to Upriver Bright Chinook are projected to be 21.89% and impacts to wild Group B steelhead are projected to be 12.4%, both within the preseason guidelines. Continues the commercial sale of platform and hook and line caught fish in the treaty Indian fishery, including Washington tributaries, consistent with Yakama Nation rules for those tributaries. Season is consistent with the 2005-2007 management agreement and the biological opinion. Consistent with action of the Columbia River compact of September 16, 2005, and conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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: September 16, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

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

1) Open Periods: 6:00 a.m. September 19, 2005 to 6:00 p.m. September 23, 2005

a) Open Areas: SMCRA 1F, 1G, 1H

b) Gear: Gill Nets. 8-inch minimum mesh restriction. Drift gill nets up to 800 feet in length are allowed.

c) Allowable sale includes: salmon, steelhead, walleye, carp, and shad. Sturgeon may not be sold.

d) Sanctuaries: All standard dam and river mouth sanctuaries are in effect. The small 150 foot sanctuary around Spring Creek Hatchery will be in effect.

2) Open Periods: Immediately until further notice.

a) Open Areas: SMCRA 1F, 1G, 1H, the Klickitat River and the White Salmon River.

b) Gear: Hoop nets, dip bag nets, or hook and line.

c) Allowable sale includes: Salmon, steelhead, walleye, carp and shad. Commercial sales of platform and hook and line caught fish are allowed during commercial gillnet openings. Fish taken in the Klickitat and White Salmon rivers may be sold when those rivers are open pursuant to lawfully enacted tribal rules.

3) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

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

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

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

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

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

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

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

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to

a marker located approximately 1/2 mile upstream from the eastern shoreline.

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

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

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

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

Reviser's note: The typographical 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 6:00 a.m. September 19, 2005:

WAC 220-32-05100P	Columbia River salmon seasons above Bonneville Dam. (05-207)
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**WSR 05-19-070
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-218—Filed September 16, 2005, 3:46 p.m., effective September 16, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000L; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Sets the first late fall commercial fishing season. Harvestable salmon and sturgeon are available. The season is consistent with the 2005-2007

interim management agreement and the 2005 non-Indian allocation agreement. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. A biological opinion covering Columbia River fisheries was received from NMFS on May 9, 2005. Regulation is consistent with compact action of September 16, 2005. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

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

1. OPEN AREA: SMCRA 1A, 1B, and 1C upstream to the Longview Bridge

a. SEASON: 6:00 a.m. to 6:00 p.m. September 19, 2005

6:00 a.m. to 6:00 p.m. September 20, 2005

6:00 a.m. to 6:00 p.m. September 22, 2005

b. GEAR: Drift gill nets only. 6-inch maximum mesh, unslackened floater gill net during September 19 and 20. During September 22, there will be no minimum mesh restriction and maximum mesh size will be 9 3/4 inches.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The ten sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. SANCTUARIES: Elochoman, Abernathy.

e. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. OPEN AREA: SMCRA 1C upstream of the Longview Bridge, 1D, 1E.

a. SEASON: 8:00 p.m. September 19 to 1:00 a.m. September 20, 2005

8:00 p.m. September 20 to 1:00 a.m. September 21, 2005

8:00 p.m. September 22 to 1:00 a.m. September 23, 2005

b. GEAR: Drift gill nets only. 8-inch minimum and 9 3/4 inch maximum mesh restriction.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The ten sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. SANCTUARIES: Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal rivers.

e. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

3. OPEN AREA: Blind Slough/Knappa Slough Select Area. Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 7:00 p.m. to 7:00 a.m. through September 23 and 6:00 p.m. to 8:00 a.m. thereafter.

b. GEAR: Gillnet - 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The ten possession and sales limit includes mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

4. OPEN AREA: Tongue Point/South Channel Select Area. Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green

USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

b. GEAR: In the Tongue Point area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. In the South Channel area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The ten possession and sales limit includes mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

5. OPEN AREA: Deep River Select Area. Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

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

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The ten possession and sales limit includes mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

6. OPEN AREA: Steamboat Slough Select Area. Steamboat Slough fishing area includes all waters bounded by markers on Price Island and the Washington shore, at both ends of Steamboat Slough. All open waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 7:00 p.m. to 7:00 a.m. through September 23 and 6:00 p.m. to 8:00 a.m. thereafter.

b. GEAR: The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight

restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of ten sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The ten possession and sales limit includes mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000L Columbia River season
below Bonneville. (05-192)

WSR 05-19-071 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 05-219—Filed September 16, 2005, 3:47 p.m., effective September 17, 2005, 7:00 a.m.]

Effective Date of Rule: September 17, 2005, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-40100E; and amending WAC 220-47-401.

Statutory Authority for Adoption: RCW 77.12.240.

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: Fraser River panel relinquished regulatory control nine days earlier than expected. This regulation provides for reef net regulation changes arising from North of Falcon agreements made by comanagers. These emergency rules are necessary to initiate fisheries. There is insufficient time to promulgate permanent rules.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

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

Date Adopted: September 16, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-47-40100E Reef net open periods Notwithstanding the provisions of Chapter 220-47-401 WAC, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
7:00 a.m. to 7:00 p.m.	September 17 through September 30

It is unlawful to retain chinook and sockeye salmon at all times, and it is unlawful to retain chum salmon and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. September 30, 2005:

WAC 220-47-40100E Reef net open periods.

**WSR 05-19-102
EMERGENCY RULES**

STATE BOARD OF EDUCATION

[Filed September 20, 2005, 1:45 p.m., effective September 20, 2005]

Effective Date of Rule: Immediately.

Purpose: The revisions to this section are to clarify language and remove an outdated reference to a repealed WAC section.

Citation of Existing Rules Affected by this Order: Amending WAC 180-33-015.

Statutory Authority for Adoption: RCW 28A.525.020.

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: With the release of this year's funds, this change is needed to help clarify program information for school districts for their construction needs.

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

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

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

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

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

Date Adopted: August 26, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 91-12-058, filed 6/5/91, effective 7/6/91)

WAC 180-33-015 Eligibility for state financial assistance. (1) In order to be eligible for state financial assistance, a modernization project shall have as its principal purpose one or more of the following:

(a) Bringing a facility into compliance with current building and health codes when so required by state or local health or safety officials;

(b) Changing the grade span grouping by facility by the addition, deletion, or combination thereof of two or more grades within the affected facility; ((~~or~~))

(c) The reduction of the number of operating school facilities in a district by combining the remaining school facilities through modernization and new capital construction so as to achieve more cost effective and efficient operation in the combined school facility or facilities. In order to be eligible for state financial assistance, such a project shall result in additional space for at least 100 additional pupils and the following enrollment in any combined facility:

(i) Elementary school facility—500 pupils;

(ii) Middle or junior high school facility—700 pupils;

(iii) Senior high school facility—850 pupils;

Provided, That modernization projects in school districts with a high school enrollment of less than 850 pupils need not comply with the enrollment figures set forth above: Provided further, That unless the district ((~~meets an exception provided in WAC 180-33-043 or~~)) demonstrates the existence of unhoused students, state financial assistance for the new construction component of a combined modernization and new construction project shall be limited to the provision of WAC 180-33-040; or

(d) Meeting the educational program of the facility.

(2) School districts shall certify that a proposed modernization project will extend the life of the modernized school facility by at least twenty years.

(3) School districts shall be ineligible for state assistance for modernization of any school facility accepted by the school district board of directors prior to January 1, 1993, where the principal purpose of that modernization project is to:

(a) Restore building systems and subsystems that have deteriorated due to deferred maintenance;

(b) Perform piecemeal work on one section or system of a school facility;

(c) Modernize a facility or any section thereof which has been constructed within the previous twenty years;

(d) Modernize a facility or any section thereof which has received state assistance under the authority of this chapter within the previous twenty years;

(e) To modernize a senior high school facility in a district with a senior high school where there is existing space available to serve the students involved or affected in a neighboring senior high school without, in the judgment of the state board of education, an undue increase in the cost of transporting the students to and from school, decrease in educational opportunity, or proportional increase in the cost of instruction pursuant to chapter 180-25 WAC.

(4) School facilities accepted by the school district board of directors after January 1, 1993, shall be ineligible for state assistance for modernization of the facility or any section thereof where:

(a) The facility was constructed and occupied within the previous thirty years;

(b) The facility received state assistance under the authority of this chapter within the previous thirty years.

WSR 05-19-136

EMERGENCY RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 21, 2005, 8:40 a.m., effective September 21, 2005]

Effective Date of Rule: Immediately.

Purpose: These changes allow for the inclusion in school district's levy base the district's federal revenues that have been redirected to an educational service district at the request of the school district.

Citation of Existing Rules Affected by this Order: Amending WAC 392-139-310.

Statutory Authority for Adoption: RCW 28A.150.290.

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: Immediate adoption is required on this amendment to preserve equity in school district funding. Without immediate adoption, certain school

districts would lose state revenues for local effort assistance and may be required to roll back levy collections unfairly.

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

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

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

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

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

Date Adopted: September 20, 2005.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 03-21-040, filed 10/8/03, effective 11/8/03)

WAC 392-139-310 Determination of excess levy base.

The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

4199 Transportation - operations; and

4499 Transportation - depreciation.

(ii) Special education. Allocations for special education include allocations for the following accounts:

4121 Special education; and

6124 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

4155 Learning assistance;

4165 Transitional bilingual;

4166 Student achievement;

6151 Disadvantaged;

6153 Migrant;

6164 Limited English proficiency;

6264 Bilingual (direct);

6267 Indian education - JOM;

6268 Indian education - ED; and

6367 Indian education - JOM.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

- 4198 School food services (state);
- 6198 School food services (federal); and
- 6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

- 4175 Flexible education; and
- 6176 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

- 5200 General purpose direct federal grants - unassigned;
- 6100 Special purpose - OSPI - unassigned;
- 6121 Special education - Medicaid reimbursement;
- 6138 Secondary vocational education;
- 6146 Skills center;
- 6152 School improvement;
- 6154 Reading first;
- 6177 Eisenhower professional development;
- 6200 Direct special purpose grants; and
- 6300 Federal grants through other agencies - unassigned;

and

- 6310 Medicaid administrative match.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington, revised 2002.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

- 4121 Special education;
- 4155 Learning assistance;
- 4165 Transitional bilingual;
- 4166 Student achievement;
- 4174 Highly capable;
- 4175 Flexible education (2002-03 school year and thereafter);

- 4198 School food services (state);
- 4199 Transportation - operations;
- 4499 Transportation - depreciation;
- 6121 Special education - Medicaid reimbursements;
- 6124 Special education - supplemental;
- 6138 Secondary vocational education;
- 6146 Skills center;
- 6151 Disadvantaged;
- 6152 School improvement;
- 6153 Migrant;
- 6154 Reading first;
- 6164 Limited English proficiency;
- 6176 Targeted assistance;
- 6177 Eisenhower professional development; and
- 6198 School food services (federal).

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

- 5200 General purpose direct federal grants - unassigned;
- 6100 Special purpose - OSPI - unassigned;
- 6200 Direct special purpose grants;
- 6264 Bilingual (direct);
- 6267 Indian education - JOM;
- 6268 Indian education - ED;
- 6300 Federal grants through other agencies - unassigned;
- 6310 Medicaid administrative match;
- 6367 Indian education - JOM; and
- 6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

