

WSR 07-13-004
EMERGENCY RULES
INTERAGENCY COMMITTEE FOR
OUTDOOR RECREATION

[Filed June 7, 2007, 12:47 p.m., effective June 7, 2007, 12:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: In relation to projects on LEAP Capital Documents 2007-1 (aquatic lands enhancement account program) and 2007-3 (Washington wildlife and recreation program), to provide a "waiver of retroactivity" for development costs. Without amendment, the standard rule prohibits reimbursement for certain expenditures made or costs incurred without prior interagency committee approval.

Citation of Existing Rules Affected by this Order: Amending WAC 286-13-085(2).

Statutory Authority for Adoption: RCW 79A.15.060(1).

Other Authority: RCW 79A.15.070(5).

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 effective date of a permanent WAC change is several months after the actual availability of funding for projects on LEAP Capital Documents 2007-1 and 2007-3; emergency rule adoption is needed to ensure the relief provided can be used immediately by affected government entities, per IAC Resolution 2007-09 (June 7, 2007).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: June 7, 2007.

Greg Lovelady
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-13-085 Retroactive and increased costs. See WAC 286-04-010 for definition of terms for the following section.

Under most conditions, eligible expenses may only be reimbursed for activities that occur within the period cited in the project agreement. This is known as the committee's pro-

hibition on retroactivity. To avoid this prohibition, a waiver may be issued.

(1) Retroactive land acquisition costs.

The director may grant a waiver of retroactivity whenever an applicant asserts, in writing, that a condition exists which may jeopardize the project. When evidence warrants, the director may grant the applicant permission to proceed by issuing the written waiver. This waiver of retroactivity will not be construed as an approval of the proposed project. If the project is subsequently approved, however, the costs incurred will be eligible for assistance. If the project is to remain eligible for grant support from federal funds, the director shall not authorize a waiver of retroactivity to the applicant until the federal agency administering the federal funds has issued its own waiver of retroactivity as provided under its rules and regulations.

(2) Retroactive development costs. The only retroactive development costs eligible for reimbursement consideration are preliminary expenses (e.g., engineering costs).

However, solely in respect to ~~((WWRP))~~ projects on LEAP Capital Documents ~~((§))~~ 2007-1 and 2007-3, that were approved for funding by the IAC on June 7, 2007, the director is authorized to grant a waiver of retroactivity, which establishes eligibility for future reimbursement of all ~~((appropriate))~~ eligible development costs. Such applicants' retroactivity requests must be in writing, and ~~((provide sufficient justification))~~ include all post-approval materials required by IAC policy (for example, control and tenure information, compliance with applicable executive orders, etc.). Reimbursement of expenditures is subject to the provisions of WAC 286-13-070. This authority shall be effective until the execution of a project agreement or ~~((June 30, 1997))~~ September 30, 2007, whichever occurs first.

(3) Cost increases.

(a) Cost increases for approved projects may be granted by the committee if financial resources are available.

(b) Each cost increase request will be considered on its merits.

(c) If an approved project recommended for federal funding is denied by the appropriate federal agency, the sponsor may request that the committee increase assistance by an equivalent amount; such requests shall be considered on their merits.

(d) The director may approve a sponsor's acquisition, development, and/or noncapital project cost increase request so long as the total request does not exceed ten percent of the project's approved initial cost. The director's approval of an acquisition project cost increase is limited to a parcel-by-parcel appraised and reviewed value.

WSR 07-13-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-111—Filed June 7, 2007, 2:11 p.m., effective June 7, 2007, 2:11 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500P; 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: This rule conforms to federal action taken by PFMC. There is sufficient recreational quota to provide for these seasons. If sufficient quota remains, the fishery may reopen toward the end of June. 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: June 7, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-25500Q 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 as provided in this section:

(a) Catch Record Card Area 1 - Closed.

(b) Catch Record Card Area 2 - Closed.

(c) Catch Record Card Areas 3 and 4 - Open only 12:01 a.m. through 11:59 p.m. June 19, 2007, and 12:01 a.m. through 11:59 p.m. June 21, 2007, shoreward of a line approximating 30 fathoms from the Bonilla-Tatoosh line south to the Queets River as described by the following coordinates:

48°24.79'N.lat.;124°44.07'W.long.;
48°24.80'N.lat.;124°44.74'W.long.;
48°23.94'N.lat.;124°44.70'W.long.;
48°23.51'N.lat.;124°45.01'W.long.;
48°22.59'N.lat.;124°44.97'W.long.;
48°21.75'N.lat.;124°45.26'W.long.;
48°21.23'N.lat.;124°47.78'W.long.;
48°20.32'N.lat.;124°49.53'W.long.;
48°16.72'N.lat.;124°51.58'W.long.;
48°10.00'N.lat.;124°52.58'W.long.;

48°05.63'N.lat.;124°52.91'W.long.;
47°56.25'N.lat.;124°52.57'W.long.;
47°40.28'N.lat.;124°40.07'W.long.;
47°31.70'N.lat.;124°37.03'W.long.;

(i) Catch Record Card Areas 3 and 4 - Open 12:01 a.m. through 11:59 p.m. June 23, 2007.

(ii) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3 and 4, unless otherwise provided, it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48°23.9'N.;124°44.2'W.
48°23.6'N.;124°44.9'W.
48°18.6'N.;124°43.6'W.
48°18.6'N.;124°48.2'W.
48°10.0'N.;124°48.8'W.
48°02.4'N.;124°49.3'W.
47°37.6'N.;124°34.3'W.
47°31.7'N.;124°32.4'W.

(iii) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N.,124°59'W.; thence to 48°11'N.,124°59'W.; thence to 48°11'N.,125°11'W.; thence to 48°04'N.,125°11'W.; thence to 48°04'N.,124°59'W.; thence to 48°N.,124°59'W.; thence to 48°N.,125°18'W.; thence to point of origin.

(d) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Open through June 16, 2007, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(e) Catch Record Card Area 5 - Open until further notice, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

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

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

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-56-25500P Halibut—Seasons—Daily and possession limits. (07-96)

WSR 07-13-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-107—Filed June 7, 2007, 2:11 p.m., effective June 8, 2007, 12:01 a.m.]

Effective Date of Rule: June 8, 2007, 12:01 a.m.

Purpose: Amend personal use 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: This emergency regulation is necessary to assure a safe and successful youth fishing event. The fish will be planted one day prior to the event to acclimate them before the event. The closure will ensure that fish are available for the youth event. 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: June 6, 2007.

J. P. Koenings
 Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Bear Creek (Guler County Park, Klickitat Co.)
 Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. June 8, 2007, through 4:00 p.m. June 9, 2007, it is unlawful to fish in those waters of Bear Creek, inside Guler County Park, in the netted area and 200 feet either side of the netted area, except open to participants in the Youth Fishing Event from 9:00 a.m. to 12:00 p.m. June 9, 2007.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:00 p.m. June 9, 2007:

WAC 232-28-61900V Exceptions to statewide rules—Bear Creek (Guler County Park, Klickitat Co.)

WSR 07-13-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-109—Filed June 8, 2007, 3:30 p.m., effective June 13, 2007, 6:00 a.m.]

Effective Date of Rule: June 13, 2007, 6:00 a.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 77.12.047.

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 regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on nighttime fishing contained in this emergency rule. This emergency rule opens the pot fishery season for spot shrimp and maintains the open season for nonspot 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: June 7, 2007.

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 fur-

ther 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) Effective 6:00 a.m. June 13, 2007, all waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 3, 4, and 6 are open immediately to the harvest of all shrimp species, until further notice, except as provided for in this section:

i) All waters of Catch Area 23A-C and the Discovery Bay Shrimp District are closed.

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

(c) Effective immediately, until 11:59 p.m. June 17, 2007, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds.

(d) Effective 12:01 a.m. June 18, 2007, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Shrimp Management Area 6, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and 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 any spot shrimp from any previous accounting week.

(e) It is unlawful to set, fish or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 4 and 6, on days when fishing for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(f) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

(g) 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:

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

(h) 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 that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(g) above.

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

(a) That portion of Catch Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 13, 2007:

WAC 220-52-05100D Puget Sound shrimp beam trawl fishery—Season (07-65)

WSR 07-13-013 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-110—Filed June 8, 2007, 3:30 p.m., effective June 13, 2007]

Effective Date of Rule: June 13, 2007.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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: Washington department of fish and wildlife personnel are conducting a biotelemetry study on movement and behavior of tiger muskellunge in Curlew Lake. Prohibiting harvest of tiger muskellunge from June 13 through July 20, 2007, will facilitate FDA compliance with regulations for fish that are anesthetized during capture and tagging activities scheduled for the week of June 13. 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: June 7, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Curlew Lake (Ferry Co.) Notwithstanding the provisions of WAC 232-28-619, effective June 13, 2007, through July 20, 2007, it is unlawful to retain Tiger muskellunge in those waters of Curlew Lake.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. July 21, 2007:

WAC 232-28-61900X	Exceptions to statewide rules—Curlew Lake (Ferry Co.)
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WSR 07-13-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-112—Filed June 8, 2007, 3:30 p.m., effective June 9, 2007]

Effective Date of Rule: June 9, 2007.

Purpose: Amend personal use 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: The summer steelhead run on the Cowlitz River is strong and the hatchery escapement goal will 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; 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: June 8, 2007.

J. P. Keonings [Koenings]
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Cowlitz River. Notwithstanding the provisions of WAC 232-28-619, effective June 9, 2007, until further notice, in those waters of the Cowlitz River from the Highway 4 Bridge at Kelso, upstream to 100 feet or posted markers below the Barrier Dam, special daily limit of six hatchery steelhead may be retained.

WSR 07-13-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-113—Filed June 8, 2007, 3:30 p.m., effective June 9, 2007, 12:01 a.m.]

Effective Date of Rule: June 9, 2007, 12:01 a.m.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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: Regulations stipulate that only juveniles under the age of 15 may fish at Mill Pond. In order to hold the fishing derby and for citizens 62 years of age and older to legally fish Mill Pond this regulation is needed. 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: June 8, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Mill Pond (King Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. through 11:59 p.m. June 9, 2007, it is lawful for persons 62 years of age and older to fish in the waters of Mill Pond.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. June 10, 2007:

WAC 232-28-61900Z Exceptions to statewide rules—Mill Pond (King Co.)

WSR 07-13-020
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 11, 2007, 2:29 p.m., effective June 27, 2007]

Effective Date of Rule: June 27, 2007.

Purpose: The department is amending WAC 388-492-0040 Can I choose whether I get Washington combined application project (WASHCAP) or regular food assistance?, this rule change is necessary so we can allow recipients to choose whether to participate in WASHCAP or apply for Basic Food benefits if their food benefits under Basic Food would be at least \$40 more due to excess shelter costs or legally obligated child support payments. The change also removes the high rent threshold as an opt-out criterion, to be replaced by the benefit difference criterion, and corrects the date for the grandfathered rule consistent with a court order.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0040.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: See below.

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: The United States Department of Agriculture, Food and Nutrition Services approved an extension to the Washington combined application project (WASHCAP) waiver from December 1, 2006, through

November 30, 2011. A letter, dated January 17, 2007, from Arthur Foley, Director of Program Development Division, FNS, gives the department authorization to establish a food stamp benefit loss of \$40 as the threshold at which households participating in WASHCAP may "opt out" and participate in the regular food stamp program. Additional changes are consistent with a Thurston County Superior Court Order from November 2005. This extends the emergency rule filed as WSR 07-06-019. When the permanent rule filed as WSR 07-12-025 becomes effective, it will supersede this emergency 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 8, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or Basic Food benefits? You can choose to have Basic Food benefits instead of WASHCAP food benefits when:

(1) (~~Your nonutility shelter costs as defined in WAC 388-450-0190 (1)(a) through (d) are more than five hundred sixty seven dollars a month;~~

~~(2))~~ Your out-of-pocket medical expenses are more than thirty-five dollars a month; (~~or~~

~~(3))~~ (2) You chose to have Basic Food benefits instead of WASHCAP benefits prior to (~~January 4~~) April 25, 2005; or

(3) Your food benefits under Basic Food would be at least forty dollars more due to excess shelter costs under WAC 388-450-0190 (1)(a) through (e) or legally obligated child support payments.

WSR 07-13-036
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed June 13, 2007, 2:09 p.m., effective June 13, 2007, 2:09 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to allow the new department of early learning (DEL) to continue performing background clearances on and providing due process hearing procedures to child care providers after the department separated from the department of social and health services (DSHS) and became a new department as of July 1, 2006. The obsolete DSHS rules about background checks and hearings are being restored in new Title 170 WAC, which is the new DEL Title. This is an extension to allow for more public comment and response.

Statutory Authority for Adoption: Section 301, chapter 265, Laws of 2006.

Other Authority: Chapter 265, Laws of 2006.

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: SSHB 2964 (chapter 265, Laws of 2006) created the DEL, effective July 1, 2006. The department had existed as division of child care and early learning, a part of DSHS. One function of the department is to perform background checks on applicants for child care licenses and workers in child care. Another function is to process administrative hearings when an applicant for a child care license is denied the license or denied the clearance to work with children. With the creation of the DEL, child care background check and hearing rules in Title 388 WAC became obsolete for regulating child care. These new rules are needed to allow the new DEL to continue performing background checks and conducting hearings. This is vital to the health [and] safety of children in care. These rules are necessary to implement the legislature's intent in SSHB 2964. The DEL is in the process of making these rules permanent. Six public forums about the child care hearing and background check rules were held November and December 2006. This extension is required to allow time for follow-up and respond to public input.

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 72, 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 72, Amended 0, Repealed 0.

Gary Burriss
Assistant Director

Chapter 170-03 WAC

DEL HEARING RULES

I. GENERAL PROVISIONS

NEW SECTION

WAC 170-03-0010 Purpose and scope. (1) Application. This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of early learning (DEL) and:

- Individuals or entities who are applicants for child care licenses or who are licensees of DEL and are adversely affected by a decision of DEL;
- Applicants for employment or employees of licensed child care agencies, child care providers, staff, volunteers, contracted providers, or other individuals who are required to meet background check standards before being authorized to care for or have unsupervised access to children in child care and who are disqualified by DEL;

Individuals receiving child care subsidies or on whose behalf child care subsidies are paid under the seasonal child care program who are assessed an overpayment and who dispute the overpayment.

(2) **Relation to statutes and rules.** The rules of this chapter are intended to supplement RCW 43.20A.205 and its DEL successor, the statute governing hearing rights for licensees, section 311, chapter 265, Laws of 2006, the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH). If a provision of this chapter conflicts with a provision in any chapter containing a substantive rule, the provision in the chapter containing the substantive rule governs.

(3) **Relation to actions and rules of other agencies.** Actions of DEL sometimes rely in part on actions taken by other agencies, most notably the department of social and health services (DSHS), or are taken in conjunction with the actions of other agencies. For example, DSHS's division of licensed resources/child protective services (DLR/CPS) has statutory responsibility for investigating allegations of child abuse or neglect in licensed child care agencies. If DLR/CPS finds child abuse or neglect occurred in a child care facility, the person who is the subject of the finding will have a right to a hearing to challenge that finding under DSHS rules. If the subject is a licensed provider, the child care license may be revoked as a result of the circumstances and finding and the provider also would have a right to a hearing under DEL hearing rules. To the extent the child abuse or neglect case and the licensing case can be consolidated or combined in one hearing, they should be combined.

(4) **Application and amendments.** This chapter and any amendment to this chapter applies to cases pending at the time of the adoption of the rule or amendment, unless the amendment or rule-making order specifically states that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone in order to comply with the amendment, unless the amendment expressly says so.

Effective date: This chapter is effective July 3, 2006. In addition to cases arising on or after the effective date, this chapter applies to all pending DEL cases that have not gone to a full hearing before an ALJ by July 3, 2006, and to cases in which an initial decision is subject to review, but in which a petition for review has not been filed by July 3, 2006. This chapter does not apply to cases in which the hearing was held or begun prior to July 3, 2006, and/or which are awaiting initial decisions; Provided, Parts VIII and IX of this chapter, governing review of initial decisions, will apply to review of any initial decision mailed after the effective date of this chapter.

NEW SECTION

WAC 170-03-0020 Definitions. The following definitions apply to this chapter:

(1) "**Administrative law judge (ALJ)**" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DEL employees or DEL representatives.

(2) "**Business days**" means all days except Saturdays, Sundays and legal holidays.

(3) "**Calendar days**" means all days including Saturdays, Sundays and legal holidays.

(4) "**Case**" means the entire proceeding following the filing of a request for hearing with OAH.

(5) "**Continuance**" means a change in the date or time of a prehearing conference, hearing or deadline for other action.

(6) "**DEL**" or "**department**" means the department of early learning.

(7) "**Documents**" means papers, letters, writings, or other printed or written items.

(8) "**Ex parte contact**" means a written or oral communication with a judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(9) "**Final order**" means an order that is the final DEL decision.

(10) "**Good cause**" means a substantial reason or legal justification for failing to appear, to act, or respond to an action required under these rules.

(11) "**Hearing**" means a proceeding before OAH that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DEL. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 170 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

(12) "**Initial decision**" is a decision made by an ALJ that may be reviewed by a review judge.

(13) "**OAH**" means the office of administrative hearings.

(14) "**Party**" means a person or entity to whom a DEL action is directed that has a right to be involved in the hearing

process. DEL also is a party, but is referred to in this chapter as DEL or the department.

(15) "**Representative**" means the person selected by a party to represent that party in an administrative hearing. "**Lay representative**" means a person or advocate who is assisting a party in presenting that party's case in administrative hearings. "**DEL representative**" means an employee of DEL, a DEL contractor, or an employee of the office of the attorney general authorized to represent DEL in an administrative hearing.

(16) "**Record**" means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(17) "**Review**" means the act of reviewing initial orders and making the final agency decision as provided by RCW 34.05.464.

(18) "**Review judge**" or "**DEL review judge**" means an attorney employed by DEL to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(19) "**Rule**" means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(20) "**Stay**" means an order temporarily halting the DEL decision or action.

(21) "**Words of command**" such as "should," "shall," and "must" are words that impose a mandatory obligation on a participant in the hearing process. The words "may" or "will" are used when referring to a discretionary act to be taken by an ALJ or review judge.

NEW SECTION

WAC 170-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to find out when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday or legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and legal holidays.

(4) The deadline ends at 5:00 p.m. on the last day.

II. HEARING RIGHTS AND REQUESTS

NEW SECTION

WAC 170-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing only if a law or DEL rule expressly gives that right and a hearing is timely requested.

(2) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DEL rule. In most cases, DEL will send a notice of adverse action or disqualification that gives specific information about how, where and when to request a hearing.

(3) A challenge to a DEL adverse action is heard in an administrative hearing by an administrative law judge (ALJ) employed by the office of administrative hearings (OAH). Not all actions of DEL may be challenged through the hearing.

(4) If a party requests a hearing, one will be scheduled.

(5) If DEL or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right. The ALJ will decide either:

(a) There is no right to a hearing and dismiss the case; or

(b) There is a right to a hearing and proceed with the hearing.

NEW SECTION

WAC 170-03-0050 Requesting a hearing. (1) A request for hearing must be made in writing. It can be made by the party requesting the hearing or the party's representative.

(2) The hearing request should include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DEL action;

(c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party;

(d) A copy of the notice from DEL stating the adverse action.

(3) The request should be filed with OAH and served on DEL.

NEW SECTION

WAC 170-03-0060 Filing the request for hearing. (1) Filing is the act of delivering documents to OAH at the location listed in WAC 170-03-0070.

(2) The date of filing is the date documents are actually received by OAH during office hours.

(3) A party may file documents with OAH by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(4) A party cannot file documents by e-mail.

NEW SECTION

WAC 170-03-0070 Location of office of administrative hearings. (1) The office of administrative hearings (OAH) is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

(2) The address for the office of administrative hearings (OAH) is:

Office of Administrative Hearings
2420 Bristol Court S.W., 1st Floor
P.O. Box 42488
Olympia, WA 98504-2488
360-664-8717
360-664-8721 (fax)

Requests for hearing should be sent to the attention of Barb Cleveland, Executive Assistant.

NEW SECTION

WAC 170-03-0080 Service of notice and documents.

(1) Service is the act of delivering a copy of documents to the opposing party. Service gives the opposing party notice of the request for hearing or other action. When a document is given to a party, that party is considered served with official notice of the contents of the document.

(2) A party may serve another party by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party cannot serve documents by e-mail.

(4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files a pleading (request for hearing), brief or other document with OAH or the review judge or when required by law.

(5) Service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed and deposited in the United States mail;

(c) Fax produces proof of transmission;

(d) A parcel is delivered to a commercial delivery service with charges prepaid; or

(e) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 170-03-0090 Proof of service. A party may prove that an opposing party was served with documents by providing any of the following:

(1) A sworn statement by the person who served the document;

(2) The certified mail receipt signed by the recipient;

(3) An affidavit or certificate of mailing;

(4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;

(5) Proof of fax transmission; or

(6) Acknowledgment by the party being served.

NEW SECTION

WAC 170-03-0100 Representation during the hearing process. (1) The party requesting the hearing may represent himself or herself or may have another person, except a DEL employee, act as the representative.

(2) The representative may be a friend, relative, community advocate, attorney, paralegal, or lay representative.

(3) The representative should provide OAH and the other parties with the representative's name, address, and telephone number. If the representative is an attorney or lay representative, the representative must file a written notice of appearance in the action. If the representative is not an attorney, the party must provide a written statement to DEL authorizing the release of information about the party to the representative.

(4) DEL may be represented by an employee of DEL, a DEL contractor, or an assistant attorney general.

III. INTERPRETER SERVICES

NEW SECTION

WAC 170-03-0110 The right to an interpreter in the hearing process. (1) If a party has limited English proficiency (LEP), OAH will provide an interpreter.

(2) If OAH is notified that a party is a limited English-speaking person, all notices concerning hearings must:

- (a) Be written in the party's primary language; or
- (b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

NEW SECTION

WAC 170-03-0120 Definitions. The following definitions apply to rules relating to interpreter services.

(1) "**Hearing impaired person**" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

(2) "**Limited English proficient (LEP)**" includes limited English-speaking persons or other persons unable to communicate in spoken English because of a hearing impairment.

(3) "**Limited English-speaking (LES) person**" means a person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

NEW SECTION

WAC 170-03-0130 Interpreter qualifications. (1) OAH must provide a qualified interpreter to assist any person who:

- (a) Has limited English proficiency; and
 - (b) Is a party or witness in a hearing.
- (2) OAH may hire or contract with persons to interpret at hearings.
- (3) Relatives of any party and DEL employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

NEW SECTION

WAC 170-03-0140 Waiver of interpreter services. (1) An eligible party may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record.

(3) The ALJ must determine that the waiver has been knowingly and voluntarily made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the hearing.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

NEW SECTION

WAC 170-03-0150 Requirements that apply to the use of interpreters. (1) Interpreters must:

- (a) Use the interpretive mode that the parties, the limited English proficient or hearing impaired person, the interpreter and the ALJ consider the most accurate and effective;
- (b) Interpret statements made by the parties and the ALJ;
- (c) Not disclose information about the hearing without the written consent of the parties; and
- (d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may videotape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION

WAC 170-03-0160 Requirements that apply to decisions involving limited English-speaking parties. (1) When an interpreter is used at a hearing, the ALJ must explain that the decision will be written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost.

(2) Interpreters must provide a telephone number where they can be reached to the ALJ and to the LES party. This number must be included in any decision or order mailed to the parties.

(3) OAH or the review judge must mail a copy of a decision or order to the interpreter for use in oral translation.

IV. PREHEARING PROCEDURES

NEW SECTION

WAC 170-03-0170 Notice of hearing. (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference.

(2) The notice of hearing or prehearing conference will include:

(a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;

(b) The name, mailing address, and telephone number of the ALJ, if known;

(c) The date, time, place, and nature of the hearing;

(d) The legal authority and jurisdiction for the hearing; and

(e) The date of the hearing request.

(3) OAH also will send information with the notice of hearing stating:

(a) If a party fails to attend or participate in a prehearing conference or a hearing, that party may lose the right to a hearing and the ALJ may enter an order of default or an order dismissing the case.

(b) If a party needs a qualified interpreter because the appealing party or any witness has limited English proficiency, OAH will provide an interpreter at no cost.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for a party or witness.

(e) How to contact OAH if a party has a safety concern.

NEW SECTION

WAC 170-03-0180 Prehearing conferences. (1) A prehearing conference is a formal meeting that may be conducted by an ALJ before a full hearing. A prehearing conference may not be conducted in some cases. In others, more than one prehearing conference may be necessary.

(2) Either the ALJ or a party may request a prehearing conference, but the ALJ decides whether to hold a prehearing conference. OAH sends notice of the time and date of the conference to all parties.

(3) An ALJ may conduct the conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(4) Attendance of the parties and their representatives is mandatory. A party may lose the right to participate during the hearing if that party does not attend the prehearing conference.

(5) Additional prehearing conferences may be requested by the parties and/or set by the ALJ to address the procedural or other issues specific to the case.

NEW SECTION

WAC 170-03-0190 Purposes of prehearing conference. (1) The purposes of the prehearing conference are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time and place of the hearing;

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the DEL notice of adverse action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve the names and phone numbers of witnesses, and copies of all documents or other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DEL rule;

(k) Consider a motion for summary judgment or other motion; or

(l) Determine any other procedural issues raised by the parties.

NEW SECTION

WAC 170-03-0200 Prehearing order. (1) After the conference ends, the ALJ will send a prehearing order describing:

(a) The decisions made or actions taken during the conference;

(b) Any changes to DEL's or other party's initial documents; and

(c) Any agreements reached.

(2) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

NEW SECTION

WAC 170-03-0210 Assignment and challenge of assignment of administrative law judge. (1) OAH assigns an ALJ at least five business days before the hearing and discloses that assignment in writing to the parties. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing.

(2) A party may file a motion of prejudice against an ALJ under RCW 34.12.050 by:

(a) Sending a written motion of prejudice at least three business days before the hearing, and before the ALJ rules on a discretionary issue in the case.

(b) The motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(c) The party must send the request to the OAH field office where the ALJ works and send a copy of the request to all other parties or, if other parties are represented, to the representatives.

(3) The first timely request for a different ALJ is automatically granted. Any later request may be granted or denied by the chief ALJ or a designee.

(4) A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge by:

(a) Sending a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest or an ex parte contact.

(b) A party must send or deliver the petition to the judge assigned to the case and send a copy of the petition to all other parties or, if other parties are represented, to the representatives. The ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

V. LAWS APPLIED IN ADMINISTRATIVE HEARINGS

NEW SECTION

WAC 170-03-0220 Rules an ALJ or review judge must apply when making a decision. (1) ALJs and the review judge must first apply the DEL rules adopted in the Washington Administrative Code.

(2) If no DEL rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and published appellate court decisions.

NEW SECTION

WAC 170-03-0230 Challenges to validity of DEL rules. (1) Neither an ALJ nor a review judge may decide that a DEL rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DEL rule is raised during the hearing, the ALJ or review judge may allow argument for later court review.

NEW SECTION

WAC 170-03-0240 Amendment to DEL notice or party's request for hearing. (1) The ALJ must allow DEL to amend (change) the notice of a DEL action before or during the hearing to match the evidence and facts.

(2) If DEL amends its notice, it must put the change in writing and give a copy to the ALJ and the other parties.

(3) The ALJ may allow an appealing party to amend a hearing request before or during the hearing to conform with an amended DEL notice.

(4) If there is an amendment to either the DEL notice or the appealing party's request for hearing, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier DEL notice or from the appealing party's request for hearing.

(5) If the ALJ grants a continuance, OAH must send a new hearing notice at least seven business days before the new hearing date.

NEW SECTION

WAC 170-03-0250 Change of address. (1) A party must tell DEL and OAH, as soon as possible, when the party's mailing address or telephone number changes.

(2) If OAH and DEL are not notified of a change in a party's mailing address and either DEL or OAH continues to send notices and other important papers to the address stated in the file, the ALJ and DEL may assume that the documents were received.

NEW SECTION

WAC 170-03-0260 Continuances. (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agree to the continuance.

(a) If the parties agree to a continuance, the ALJ will grant the request, unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant or deny the continuance.

(4) If a continuance is granted, OAH will send written notice of the changed time and date of the hearing.

NEW SECTION

WAC 170-03-0270 Order of dismissal. (1) An order of dismissal is an order sent by the ALJ to end the hearing. The order is made by agreement of the parties, or because the party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(2) If a hearing is dismissed because the appealing party did not appear or refused to participate, the DEL decision stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

NEW SECTION

WAC 170-03-0280 Vacating an order of default or order of dismissal. (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal.

(a) A request to vacate an order must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was mailed. If no request is received within that deadline, the order becomes a final order.

(b) The request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(2) OAH will schedule a hearing on the request to vacate the order.

(3) At the hearing, the ALJ will receive evidence and argument from the parties on whether there is good cause for an order of default to be vacated.

(4) The ALJ will vacate an order of dismissal and reinstate the hearing if the defaulted party shows good cause or if the DEL representative agrees to waive the deadline.

(5) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

NEW SECTION

WAC 170-03-0290 Stay of DEL action. (1) Except as set forth in WAC 170-03-0300, at any point in the proceeding before OAH or the review judge, the appealing party may request that an ALJ or review judge stay (stop) a DEL action until there is a decision entered by the ALJ or review judge.

(2) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause the ALJ must determine:

(a) The party requesting the stay is likely to prevail in the hearing on the merits;

(b) The party requesting the stay will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances of the case.

NEW SECTION

WAC 170-03-0300 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a license issued under chapter 265, Laws of 2006 when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) A licensee who contests suspension of a license by the department may obtain a stay of the effectiveness of that order only as set forth in this section.

(3) The licensee may request a stay by including such a request in the request for hearing or in a subsequent motion. The request for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based.

(4) Upon receipt of a request for a stay, the ALJ will schedule a hearing on the request. The hearing may be combined with a prehearing conference. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the ALJ may advance the hearing date on its own initiative or by request of the parties.

(5) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the licensing action;

(b) The licensee will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license.

(6) Economic hardship of itself shall be an insufficient reason for a stay of a suspension of a license.

(7) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a request for a stay, will expedite the hearing and decision on the merits.

(8) The decision on the request for the stay is subject to review by the review judge at the request of either DEL or the licensee. The request for review must be filed not later than seven days following the date the decision on the request for stay is mailed by OAH to the parties.

(9) A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.

VI. HEARINGS

NEW SECTION

WAC 170-03-0340 Conduct of hearings. (1) Hearings may be held in person or by telephone conference or other electronic means.

(2) All parties, their representatives and witnesses may attend the hearing in person or by telephone conference or other electronic means at the discretion of the ALJ.

(3) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served in advance of the hearing.

(5) All hearings must be recorded.

NEW SECTION

WAC 170-03-0350 Authority of the administrative law judge. (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing, provided that the ALJ's authority shall be limited to determining whether the sanction imposed or action taken by the department was warranted and/or justified under the evidence presented during the hearing. The ALJ shall not have authority to substitute or impose an alternative sanction, remedy or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits and/or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DEL rule; and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that:

(a) The waiver is necessary to avoid manifest injustice to the unrepresented party; and

(b) That the waiver would not prejudice any other party.

(5) The ALJ shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

NEW SECTION

WAC 170-03-0360 Order of the hearing. (1) At the hearing, the ALJ:

(a) Explains the rights of the parties;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing; and

(e) Notifies the parties of appeal rights.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

WAC 170-03-0390 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the ALJ.

(5) The ALJ may only consider admitted evidence to decide a case.

NEW SECTION

WAC 170-03-0400 Introduction of evidence into the record. (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) The other parties agree to waive the deadline.

(2) The ALJ may admit and consider hearsay evidence.

Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

(3) The ALJ may reject evidence, if it:

(a) Is not relevant;

(b) Repeats evidence already admitted;

(c) Is from a privileged communication protected by law;

or

(d) Is otherwise legally improper.

(4) Except in cases where the department's notice of adverse action alleges the person lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care, evidence regarding character or reputation shall not be admissible. In cases where such evidence is admissible, the ALJ shall exercise reasonable control over the number of character witnesses so as to avoid duplication of testimony and evidence and needless consumption of time.

NEW SECTION

WAC 170-03-0410 Objections to evidence. (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an

offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

(4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ has discretion to strike all testimony previously given by that witness on the proceeding.

NEW SECTION

WAC 170-03-0420 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter it into the record.

NEW SECTION

WAC 170-03-0430 Exhibits. (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

NEW SECTION

WAC 170-03-0440 Judicial notice. (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.

(2) An ALJ may consider and admit evidence by taking judicial notice.

(3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 170-03-0450 Witnesses. (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Witnesses may include:

(a) The appealing party or a DEL representative;

(b) Anyone a party or the ALJ asks to be a witness.

(4) The ALJ decides who may testify as a witness.

(5) Unless DEL agrees, a current or former DEL employee may not be an expert witness against DEL if that employee was actively involved in the case while working for DEL.

NEW SECTION

WAC 170-03-0460 Requiring witnesses to testify or provide documents. (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

(2) ALJs, DEL, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf.

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena.

(b) There is no cost to prepare a subpoena, but a party may have to pay for:

(i) Serving a subpoena;

(ii) Complying with a subpoena; and

(iii) Witness fees according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

NEW SECTION

WAC 170-03-0470 Serving a subpoena. (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 170-03-0480 Testimony. (1) Direct examination. All witnesses may be asked questions by the party that calls the witness to testify. Each witness:

(a) Must affirm or take an oath to testify truthfully during the hearing;

(b) May testify in person or by telephone;

(c) May request interpreters from OAH at no cost to the parties;

(d) May be subpoenaed and ordered to appear according to WAC 170-03-0460.

(2) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(3) If a party has a representative, only the representative, and not the party, may question the witness.

(4) The ALJ may also question witnesses.

NEW SECTION

WAC 170-03-0490 Burden of proof. (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden of proof.

NEW SECTION

WAC 170-03-0500 Equitable estoppel. (1) Equitable estoppel is a legal doctrine defined in case law that may prevent DEL from taking some action against a party in a proceeding to challenge an overpayment notice issued by DEL.

(2) There are five elements of equitable estoppel that must be proved by clear and convincing evidence. All of the following elements must be proved:

(a) DEL made a statement or took action or failed to take action, which is inconsistent with its later claim or position regarding an overpayment.

(b) The appealing party relied on DEL's original statement, action or failure to act.

(c) The appealing party will be injured if DEL is allowed to contradict the original statement, action or failure to act.

(d) Equitable estoppel is needed to prevent a manifest injustice.

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel in subsection (2) of this section have been proved with clear and convincing evidence, DEL is stopped or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

WAC 170-03-0510 Closing the record. When the record is closed, no more evidence may be taken, without a showing of good cause. The record is closed:

(1) At the end of the hearing if the ALJ does not allow more time to send in evidence or argument; or

(2) After the deadline for sending in evidence or argument is over.

VII. INITIAL DECISIONNEW SECTION

WAC 170-03-0520 Timing of the ALJ's decision. (1) After the record is closed, the ALJ must write a hearing decision and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed.

NEW SECTION

WAC 170-03-0530 Contents of the initial decision. The ALJ initial decision must:

(1) Identify the hearing decision as a DEL case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result;

(9) Explain how to request changes in the decision and the deadlines for requesting them;

(10) State the date the decision becomes final; and

(11) Include any other information required by law or DEL program rules.

NEW SECTION

WAC 170-03-0540 Finality of initial decision. If no one requests review of the initial order or if a review request is dismissed, the initial decision becomes the final decision of DEL twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

WAC 170-03-0550 Challenges to the initial decision. (1) If a party disagrees with an ALJ's initial decision because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 170-03-0560.

(2) If a party disagrees with the reasoning and result of an initial decision and wants it changed, the party must request review by the review judge as provided in WAC 170-03-0570 through 170-03-0620.

NEW SECTION

WAC 170-03-0560 Correcting clerical errors in ALJ's decisions. (1) A clerical error is a mistake that does not change the result or intent of the decision. Some examples of clerical error are:

(a) Missing or incorrect words or numbers;

(b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or

(c) Math errors when adding the total of an overpayment.

(2) A party may ask for a corrected ALJ decision by making the request in writing and sending it to the OAH office that held the hearing. A copy of the request must be sent to the other parties or their representatives.

(3) A request to correct a clerical error must be made within ten days of the date the decision was mailed to the parties by OAH.

(4) When asking for a corrected decision, a party must clearly identify the clerical error.

(5) When a party requests a corrected initial or final order, the ALJ must either:

(a) Send all parties a corrected order; or

(b) Deny the request within three business days of receiving it.

(6) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(7) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial decision by the review judge.

If a party wants to stay the DEL action until review of the initial order is completed, the party must request a stay from the review judge.

VIII. REVIEW

NEW SECTION

WAC 170-03-0570 Appeal of the initial decision.

(1) Review or appeal of the initial decision may occur when a party disagrees or wants a change in an initial order, other than correcting a clerical error.

(2) A party must request review of an initial order from the DEL review judge as provided in WAC 170-03-0580 through 170-03-0640.

(3) If more than one party requests review, each request must meet the deadlines in WAC 170-03-0580.

(4) The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed.

(5) Review does not include another hearing by the DEL review judge.

NEW SECTION

WAC 170-03-0580 Time for requesting review.

(1) The review judge must receive the written petition for review on or before the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party both:

(a) Asks for more time before the deadline expires; and

(b) Shows good cause for requesting more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The review judge receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) Good cause means a substantial reason or legal justification for failing to appear, to act, or respond to an action required under these rules.

NEW SECTION

WAC 170-03-0590 Petition for review.

(1) A party must make the review request (petition for review) in writing and clearly identify the:

(a) Parts of the initial order with which the party disagrees; and

(b) Evidence supporting the party's position.

(2) The petition for review must be filed with the review judge and a copy sent to the other parties and their representatives.

(3) The review judge can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial decision:

Review Judge
Department of Early Learning
P.O. Box 45480
Olympia, WA 98504-5480
360-725-4665

(4) After receiving a party's review request, the review judge will send a copy to the other parties, their representatives and OAH.

NEW SECTION

WAC 170-03-0600 Response to petition for review.

(1) A party does not have to respond to the review request. A response is optional.

(2) If a party responds, that party must send the response so that the review judge receives it on or before the seventh business day after the date a copy of the petition for review was mailed to the party by the review judge.

(3) The responding party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the party must contact the review judge by the deadline in subsection (2) of this section and give a good reason.

(5) A review judge may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 170-03-0610 Decision process. (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to the review after the record is closed.

(3) The review judge only considers evidence given at the original hearing.

(4) The review judge will decide the appeal without oral argument, unless the review judge determines that oral argument is necessary for resolution of the appeal.

(5) The review judge enters a final order that affirms, changes, dismisses or reverses the initial order, or remands (returns) the case to OAH for further specified action.

NEW SECTION

WAC 170-03-0620 Authority of the review judge.

(1) The review judge has the same decision-making authority as an ALJ, but must consider the ALJ's opportunity to observe the witnesses.

(2) The review judge's decision is the final decision of the agency in the case.

IX. REVIEW OF THE FINAL DECISION

NEW SECTION

WAC 170-03-0630 Request for reconsideration. (1) If a party disagrees with the final decision issued by a review judge and wants it reconsidered, the party may ask the review judge to reconsider the decision because the party believes the review judge made a mistake.

(2) If a party asks for reconsideration of the final decision, the reconsideration process must be completed before judicial review is sought.

(3) A request for reconsideration must be made in writing and must clearly state the reasons why the party wants the final decision reconsidered.

(4) The review judge must receive the written reconsideration request on or before the tenth calendar day after the final decision was mailed by the review judge to the parties. The party requesting reconsideration must send a copy of the request to all parties or, if the parties are represented, to their representatives.

(5) If a reconsideration request is received by the review judge after the deadline, the final decision will not be reconsidered. However, the review judge may extend its deadline if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for the extension.

(6) After receiving a reconsideration request, the review judge will send a copy to the other parties and representatives giving them time to respond.

(7) If a party does not request reconsideration or ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final agency decision.

NEW SECTION

WAC 170-03-0640 Response to a request for reconsideration. (1) A party does not have to respond to a request. A response is optional.

(2) If a party responds, that party must send a response to the review judge by or before the seventh business day after the date OAH or the review judge mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or the review judge may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

NEW SECTION

WAC 170-03-0650 Ruling on request for reconsideration. (1) After the review judge receives a reconsideration request, within twenty calendar days the review judge must either:

- (a) Write a reconsideration decision; or
- (b) Send all parties an order denying the request.

(2) If the review judge does not send a reconsideration decision or an order denying the request within twenty days of receipt of the reconsideration request, the request is denied.

(3) The review judge decision is final when the reconsideration decision is mailed or the date the reconsideration request is denied.

NEW SECTION

WAC 170-03-0660 Judicial review. (1) Judicial review is the process of appealing a final order to a court.

(2) Any party, except DEL, may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date OAH or the review judge mails the final decision in the case.

(3) RCW 34.05.510 through 34.05.598 contains further details of the judicial review process.

Chapter 170-06 WAC

DEL BACKGROUND CHECK RULES

NEW SECTION

WAC 170-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of early learning (DEL). The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or under DEL approval. Background checks are conducted to find and evaluate any history of criminal convictions, findings of abuse or neglect of children or other vulnerable persons, adverse licensing actions, or other information that raises concerns about an individual's character and suitability to care for or have unsupervised access to children in child care.

(2) This chapter applies to applicants for child care agency licenses, licensees, persons working in or living on the premises of a child care agency, and child care providers who are authorized by DEL to care for children. These rules apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to care for or to have unsupervised access to children after the effective date of this chapter.

(3) If any provision of this chapter conflicts with a provision relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(4) Effective date: These rules are effective July 3, 2006, and apply prospectively.

NEW SECTION

WAC 170-06-0020 Definitions. The following definitions apply to this chapter:

(1) "**Authorized**" or "**authorization**" means qualified by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(2) "**DEL**" or "**department**" means the department of early learning.

(3) "**Director's list**" means a list of crimes and civil adjudications, the commission of which disqualifies an indi-

vidual from being authorized by DEL to care for or have unsupervised access to children in child care.

(4) "**Disqualified**" means DEL has determined that a person's background information prevents that person from being authorized by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(5) "**Unsupervised access**" means:

(a) An individual will or may have the opportunity to be alone with a child in care at any time for any length of time; and

(b) Neither the licensee, a qualified employee, nor a relative or guardian of the child is present.

NEW SECTION

WAC 170-06-0030 Reason for background checks.

The department does background checks to help safeguard the health, safety and well-being of children in licensed child care agencies and in the care of DEL-approved providers. By doing background checks, the department reduces the risk of harm to children from caregivers who have been convicted of certain crimes or who have been found to have been a risk to children. The department's rules and state law require the evaluation of background information to determine the character, suitability and competence of persons who will care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0040 Background inquiries.

(1) At the time of application for a license or for authorization to care for or have unsupervised access to children in child care, a completed background check form and finger print card, if required, must be submitted to the department for each person who will have unsupervised access to any child in care. This includes:

(a) Each applicant for a license;

(b) All staff of the licensed child care agency, whether they provide child care or not;

(c) Assistants;

(d) Volunteers;

(e) Contracted providers; and

(f) Each person living on the premises of a licensed facility who is sixteen years of age or older.

(2) Each person identified in this section must consent to and authorize the department to access his or her criminal history and any information contained in any records about the person that are maintained by the department of social and health services, including child protective services, adult protective services, the division of home and community services, the division of residential care services, and the division of licensed resources.

(3) When a licensee plans to add new staff, assistants, volunteers, or contracted providers, or when any person who is sixteen years old or older moves onto the premises, the licensee shall require each person to complete and submit to the licensee a criminal history and background check form that must be submitted to DEL for processing before the date of hire or the date the individual moves onto the premises, as applicable.

(4) A person who has not been formally authorized by DEL to care for or have unsupervised access to children in child care may not have unsupervised access to any child in care.

(5) The department will discuss the result of the criminal history and background check information with the licensee, when applicable.

NEW SECTION

WAC 170-06-0050 Department action following completion of background inquiry. After the department receives the background information it will:

(1) Compare the background information with convictions/actions posted on the DEL director's list of disqualifying convictions/actions. The complete list can be found on the DEL web site or by calling any DEL office.

(2) Review the background information using the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The crime will not be considered a conviction for the purposes of the department when it has been pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.

(e) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and shall include convictions or dispositions for crimes committed as either an adult or a juvenile. It shall also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(f) A person will not be authorized to have unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(g) A person who has a "founded" finding for child abuse or neglect will not be authorized to have unsupervised access to children during the administrative hearing and appeals process.

(3) Conduct a character, competence and suitability assessment of the applicant, licensee, staff member, assistant, volunteer, contacted provider, or anyone living on the premises of a child care facility, if the individual is not automatically disqualified by a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult, under the DEL director's list of disqualifying crimes and actions.

(4) Notify the licensee or child care provider whether or not the department is able to approve the applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility to care for or have unsupervised access to children in child care.

NEW SECTION

WAC 170-06-0060 Additional information the department may consider. (1) Upon request, the licensee or any person who requests authorization to care for or to have unsupervised access to any child in care must provide to the department any additional reports or information it requests to assess the person's character, suitability and competence to have unsupervised access to children in care. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

Any evaluation requested under this section must be by a DEL-approved evaluator and will be at the expense of the person being evaluated.

(2) The applicant licensee or the person being evaluated must give the department permission to speak with the evaluator in subsection (1)(a) through (d) of this section prior to and after the evaluation.

NEW SECTION

WAC 170-06-0070 Disqualification. (1) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed child care facility who has a background containing any of the convictions/actions posted on the DEL secretary's list of permanently disqualifying convictions/actions, shall be permanently disqualified from providing licensed child care or having unsupervised access to any child in care.

(2) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility who has a background containing any of the convictions posted on the DEL secretary's list of nonpermanent disqualifying convictions shall be disqualified from providing licensed child care or having unsupervised access to any child in care for five years after the conviction date.

(3) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility shall be disqualified from providing licensed child care or having unsupervised access to any child in care if there is background information that the person:

(a) Has been found to have committed child abuse or neglect, unless the department determines that the person does not pose a risk to a child's safety and well-being;

(b) Is the parent of a child who has been found to be a dependent child as defined in chapter 13.34 RCW unless the department determines that the person does not pose a risk to a child's safety and well-being;

(c) Abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult as defined in chapter 74.34 RCW, unless the department determines that the person does not pose a risk to a child's safety and well-being;

(d) Had a license denied or revoked from an agency that regulates care of children or vulnerable adults, unless the department determines that the person does not pose a risk to a child's safety and well-being.

(4) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a

licensed facility may be disqualified from providing licensed child care or having unsupervised access to any child in care if:

(a) The licensee attempts to obtain a license by deceitful means, such as making false statements or omitting material information on the application;

(b) The staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility attempted to become employed, volunteer, or otherwise have unsupervised access to children by deceitful means, such as making false statements or omitting material information on an application to work or volunteer at a licensed child care agency or to otherwise provide child care;

(c) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children are present or presented a risk of harm to any child in care;

(d) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility has attempted, committed, permitted, or assisted in an illegal act on the premises of a home or facility providing care to children. For purposes of this subsection, a licensee attempted, committed, permitted, or assisted in an illegal act if he or she knew or should have known that the illegal act occurred.

(5) A licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing child care or having unsupervised access to any child in care if the person has background containing information other than conviction information that the department determines:

(a) Makes the person not of suitable character and competence or of sufficient physical or mental health to meet the needs of any child in care; or

(b) Places any person at a licensed child care facility at risk of harm.

NEW SECTION**WAC 170-06-0080 Notification of disqualification.**

(1) The department will notify in writing the applicant, care provider, employer, or licensee if the individual is disqualified by the background check from being authorized to care for children or to have unsupervised access to children in child care.

(2) If the department sends a notice of disqualification, the applicant will not receive a license, contract, certification, or be authorized to have unsupervised access to children in child care.

NEW SECTION**WAC 170-06-0090 Administrative hearing to contest disqualification.**

(1) Any person seeking a license or employment with a licensed facility may request an administrative hearing to contest the department's decision process to disqualify him or her from having unsupervised access to any child in care. Provided, an individual shall not have the right

to challenge a discretionary determination made pursuant to WAC 170-06-0070(3).

(2) Prospective volunteers, interns, contracted providers, or those seeking certification do not have the right to appeal the department's decision to disqualify them from having unsupervised access to any child in care.

(3) The employer or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.

(4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW), pursuant to chapter 170-03 WAC.

NEW SECTION

WAC 170-06-0100 Request for administrative hearing. (1) Any person who has a right to contest a decision to deny a license or disqualify them from having unsupervised access to any child in care based on an evaluation of background check information must request a hearing within twenty-eight days of receipt of the decision.

(2) A request for a hearing must meet the requirements of chapter 170-03 WAC.

(3) Any decision by the department denying a license or disqualifying a person from having unsupervised access to any child in care is effective immediately upon notice and shall continue pending a final administrative decision on the merits.

NEW SECTION

WAC 170-06-0110 Limitations on challenges to disqualifications. (1) If the denial or disqualification is based on a criminal conviction, the appellant cannot contest the conviction in the administrative hearing.

(2) If the denial or disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the appellant cannot contest the finding if:

(a) The appellant was notified of the finding by DSHS and failed to request a hearing to contest the finding; or

(b) The appellant was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the denial or disqualification is based on a court order finding the appellant's child to be dependent as defined in chapter 13.34 RCW, the appellant cannot contest the finding of dependency in the administrative hearing.

WSR 07-13-037

EMERGENCY RULES SECRETARY OF STATE (Elections Division)

[Filed June 13, 2007, 3:21 p.m., effective June 13, 2007, 3:21 p.m.]

Effective Date of Rule: Immediately.

Purpose: To adopt procedures to implement legislation passed by the 2007 legislature in time for the August primary. The rules address consolidated primary ballots, manual counts of selected precincts, and election supplies at poll sites.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-250-340 and 434-261-060; and amending WAC 434-220-020, 434-220-030, 434-220-040, 434-220-060, 434-220-070, 434-220-080, 434-230-170, 434-253-020, 434-253-025, and 434-262-031.

Statutory Authority for Adoption: RCW 29A.04.611.

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: See Purpose above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 2.

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 8, Repealed 2.

Date Adopted: June 13, 2007.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-020 Definitions. As used in this chapter:

(1) "Checkbox" means a voter response position on a consolidated ballot that allows a voter (~~who desires to vote in a partisan primary~~) to affiliate with a major political party.

(2) "Consolidated ballot" is a single ballot that includes party checkboxes and lists the major political party candidates for partisan office of all major political parties, the candidates for nonpartisan office, and the ballot measures. The candidates for partisan office are listed by party, and each party is separated from the other parties. The candidates for nonpartisan office and the ballot measures are listed at the end of the ballot, after the partisan offices. ((~~In the case of a direct recording electronic device, a consolidated ballot must have a beginning screen which contains a checkbox for the major political parties. After the voter has affiliated with a major party by marking a checkbox, only the party ballot checked by the voter and the nonpartisan ballot shall appear to the voter.~~))

(3) "Nonpartisan ballot" means a ballot that includes nonpartisan offices listed in RCW 29A.52.231, and ballot measures.

(4) "Party affiliation" means:

(a) For a voter:

(i) On a consolidated ballot, ~~((a voter's selection of a major political party in a manner consistent with the type of voting system used))~~ selecting a party checkbox or voting in the partisan races for candidates of only one political party;

(ii) On physically separate ballots, voting ~~((a major))~~ one political party's ballot;

(b) For a write-in candidate for partisan office, filing as a write-in candidate as a member of a major political party.

(5) "Physically separate ballots" include party ballots for each major political party, and a nonpartisan ballot. Each party ballot lists the candidates for partisan office that have listed that party on the declaration of candidacy, as well as all candidates for the nonpartisan offices and the ballot measures.

(6) "Spot color" means coloring a portion of the ballot.

(7) "Void," when applied to unvoted ballots, means keeping the unvoted ballots in the sealed container in which they were deposited on election day.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-030 Ballot layout and color—Consolidated ballots. A county may choose to use a combination of both consolidated and physically separate ballots ~~((for poll-site, absentee, and vote by mail ballots))~~. County auditors may use spot coloring, shading, or colored printing to assist the voter in distinguishing between party sections. If color is used, blue must be used for the democratic party ~~((ballot))~~, and red must be used for the republican party ~~((ballot))~~. In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of consolidated ballots:

(1) The party checkboxes must be listed before all offices and ballot measures, pursuant to RCW 29A.36.106. The checkboxes must be labeled "democratic party" and "republican party."

(2) Ballots must list partisan office candidates in columns or sections labeled "democratic party" and "republican party." The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party. If a party section spans multiple columns, the next party section must begin where the last party section ended, and there must be a well-defined division between the party sections. If all parties cannot be listed on the same side of the ballot, there must be a conspicuous explanation that additional parties are listed on the other side of the ballot.

(3) Ballots must list the nonpartisan offices and ballot measures separately in a column or section labeled "nonpartisan offices and measures."

(4) Ballot instructions must be printed on the ballot and include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

"This ballot contains ~~((major political party candidates for the))~~ partisan offices, ~~((candidates for the))~~ nonpartisan offices, and ballot measures. For the partisan offices, you may only vote for candidates of ~~((only))~~ one political party. ~~((Regardless of whether you vote for partisan offices, you may vote for the nonpartisan offices and the ballot measures.))~~

1. ~~((Select one political party. If you do not select a party or if you select more than one party, your votes for partisan offices will not be counted. No record will be made of the party you select.))~~ If you want to vote for democratic candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the democratic party and vote the democratic section of the ballot. If you want to vote for republican candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the republican party and vote the republican section of the ballot. There will be no record of which party you select. You may not select both parties or vote for candidates of both parties.

2. ~~((Vote only for candidates of that party. Votes for another party's candidates will not be counted.))~~

3.) Vote for nonpartisan offices and ballot measures. These votes will be counted, even if you do not select a political party."

(5) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-040 Ballot layout and color—Physically separate ballots. A county may choose to use a combination of both consolidated and physically separate ballots ~~((for poll-site, absentee, and vote by mail ballots))~~. County auditors may use colored ballot stock, spot coloring, shading, or colored printing to assist the voter in distinguishing between the ballots. If colored ballot stock is used, blue must be used for the democratic party ballot, and red must be used for the republican party ballot. In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of physically separate ballots:

(1) A separate ballot must be produced for ~~((each major political party and for all nonpartisan races. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party))~~:

(a) The democratic party;

(b) The republican party; and

(c) The nonpartisan offices and ballot measures.

(2) Each physically separate ballot must have "democratic party," "republican party," or "nonpartisan offices and measures" printed on the ballot. In addition to the requirements of RCW 29A.36.121, each party ballot must list partisan offices first, then all nonpartisan offices and ballot measures. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies

the candidate's political party. All ballots must be issued to each voter, both at the poll-site and to voters voting by mail or absentee. ~~((Voters must be instructed to vote and return only one ballot.))~~

(3) Ballot instructions must be printed on the ballot and must include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

~~((Separate ballots for each political party have been provided, in addition to))~~ You have been provided a democratic party ballot, a republican party ballot, and a third ballot ~~((for))~~ that only lists the nonpartisan offices and ballot measures. Each party ballot lists the candidates of that ~~((political))~~ party running for partisan office, as well as the candidates running for nonpartisan office and the ballot measures. The ~~((ballot labeled))~~ "nonpartisan offices and measures" ballot only lists the ~~((candidates running for))~~ nonpartisan offices and ~~((the))~~ ballot measures, ~~((but))~~ and does **not** list any partisan offices.

You may only vote one ballot. ~~((Your affiliation with a political party is inferred by choosing that party's ballot, but no record will be made of your choice. If you cast more than one party ballot, none of your votes for partisan office will count. If you vote for the nonpartisan offices and ballot measures on a party ballot, return the party ballot only and not the separate nonpartisan ballot. Votes for the nonpartisan offices and ballot measures will not be affected by your choice of party ballot.))~~ There will be no record of which ballot you return.

If you want to vote for democratic candidates, vote the democratic ballot. If you want to vote for republican candidates, vote the republican ballot. If you do not want to affiliate with a political party, vote the "nonpartisan offices and measures" ballot.

(4) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-060 Ballot programming—Consolidated ballots. (1) Before a county may use a consolidated ballot format, the ballot counting program must achieve the following:

(a) If a voter marks a party checkbox ~~((for a major political party, only))~~, partisan office votes for candidates of that party only may be counted, in addition to votes for the nonpartisan offices and ballot measures; ~~((and))~~

(b) If a voter marks a party checkbox, partisan office votes for candidates of the other party may not be counted;

(c) If a voter does not mark a party checkbox ~~((for a major political party, no votes for a partisan office))~~ but votes in the partisan races for candidates of only one party, the partisan office votes may be counted, in addition to the nonpartisan offices and ballot measures; ~~((and~~

~~((e)))~~ (d) If a voter does not mark a party checkbox and votes in the partisan races for candidates of both political parties, no votes for partisan office may be counted but votes for nonpartisan office and ballot measures may be counted;

(e) If a voter marks ~~((two or more))~~ both party checkboxes, no votes for ~~((a))~~ partisan office may be counted but votes for nonpartisan office and ballot measures may be counted; and

~~((f)))~~ (f) In the case of direct recording electronic devices, the voter must be allowed to select one ~~((ballot))~~ party on the first screen, and have only the ballot for the party selected appear to the voter.

(2) If an optical scan ballot counting program cannot use the checkbox to eliminate invalid votes for each of the situations listed in this section, all ballots must be inspected for those marks that cannot be read correctly. Improperly marked ballots must be duplicated to ensure invalid votes are not counted. In the case of precinct ballot counters, ballots must be inspected after they have been returned from the polls. As part of the canvassing process, the county auditor must take appropriate steps to amend the unofficial precinct count totals to reflect the correct count.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-070 Polling place procedures—Physically separate ballots. (1) In ~~((the case of optical scan))~~ a county using physically separate ballots, poll workers must give each voter a party ballot for each major political party and a nonpartisan ballot. The county auditor must number the ballot stubs in a manner so that it cannot be determined which ballot was cast by the voter. The poll workers must instruct the voter to choose one ballot to vote. The remaining two ballots must be deposited into an "unvoted ballots" container secured with a numbered seal. The voter may select a single ballot and deposit the other ballots in the "unvoted ballots" container prior to entering the voting booth, or may deposit the unvoted ballots after leaving the voting booth. Regardless of when the ballot selection is made, the poll workers must ensure that only one ballot is deposited in the ballot box and the remaining ballots are deposited into the "unvoted ballots" container. The privacy of the ballot selection by the voter must be maintained. The ballot stub must be removed and placed into the ballot stub envelope before the voted ballot is deposited into the ballot box.

(2) The "unvoted ballots" container must remain sealed and be returned to the county auditor with the supplies and voting materials.

(3) If a voter spoils a ballot and wishes to correct the error, the ballot must be returned to the poll worker and placed into the spoiled ballot envelope. The poll worker must issue a new set of ballots, consisting of each major political party's ballot and the nonpartisan ballot. The ballot stub number must be recorded in the poll book.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-080 No ~~((records made at poll sites))~~ record of political party affiliation. Pursuant to RCW

29A.44.231, no record of the political party (~~(ballot)~~) selected by the voter may be made. This prohibition includes poll workers, political observers and any other person who may be present while voting or ballot processing is taking place. The use of devices such as telephones, cameras, or recording devices to report, track, or monitor (~~(the ballot)~~) a voter's party selection ((by voters)) is prohibited.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-230-170 Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates (~~(are to)~~) may be voted on for such office ((e.g., vote for, with the words, "one," "two," or a spelled number)). The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed together with political party designation or abbreviation as certified by the secretary of state as provided in RCW 29A.36.011 or the word "nonpartisan," or "NP" as applicable. When choosing to use abbreviations, the county auditor must provide a legend on each ballot defining all abbreviations. In a partisan primary, candidates shall be listed by political party as provided in chapter 434-220 WAC. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the names of all candidates for President and Vice-President for each party shall be grouped together with one vote response position for each party, where the voter may indicate his or her choice.

Candidate names shall be printed in a type style and point size which is easily read. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include using a smaller point size, a different type style, or setting the name in upper/lower case letters, rather than upper case, if appropriate.

Each position, with the candidates running for that office, shall be clearly delineated from the following one by a bold line. Following each listing of candidates shall be a blank space for writing in the name of any candidate.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-340 Manual count of selected precincts.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-253-020 Polling place—Election supplies. Polling places shall be provided, at a minimum, with the following supplies at every election:

- (1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;
- (2) Inspector's poll book;
- (3) Required oaths/certificates for inspectors and judges;
- (4) Sufficient number of ballots as determined by election officer;
- (5) Ballot containers;
- (6) United States flag;
- (7) Voting instruction signs;
- (8) Challenge and provisional ballots and envelopes;
- (9) Cancellation cards due to death;
- (10) Voting equipment instructions;
- (11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;
- (12) Keys and/or extra seals;
- (13) Pay voucher;
- (14) Ballots stub envelope;
- (15) Emergency plan of action;
- (16) Either sample ballots or voters' pamphlets;
- (17) HAVA voter information poster;
- (18) A sign listing the date of the election and the hours of voting on election day;
- (19) Voter registration forms; and
- ~~((19))~~ (20) For partisan primaries in counties using physically separate ballots, ~~((and))~~ an "unvoted ballots" container with a numbered seal.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-025 Polling place—Items to be posted.

The following items must be posted or displayed at each polling place while it is open:

- (1) United States flag;
- (2) HAVA voter information poster;
- (3) A sign listing the date of the election and the hours of voting on election day;
- (4) Voting instructions printed in at least 16 point bold type;
- ~~((4))~~ (5) Either sample ballots or voters' pamphlets;
- ~~((5))~~ (6) Voter registration forms;
- ~~((6))~~ (7) Election materials in alternative languages if so required by the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and
- ~~((7))~~ (8) Any other items the county auditor deems necessary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-261-060 Vote tallying system—A manual count of random precincts.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-253-047. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

~~((1))~~ (a) Where two ballots are found folded together, or where a voter has voted more than one ballot;

~~((2))~~ (b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

~~((3))~~ (c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

~~((4))~~ (d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

~~((5))~~ (e) Where the voter has voted for more candidates for an office than are permissible;

~~((6) Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434-250-040 unless the voter provides written instructions directing how the vote should be counted;~~

~~(7))~~ (f) In the case of a partisan primary(~~=~~ ~~(a))~~, where the voter has voted for a write-in candidate for partisan office who has not filed a write-in declaration of candidacy, thereby affiliating with a major party.

(3) For physically separate ballots in a partisan primary:

~~((i) A log must be kept of all voted ballots rejected and included as part of the county canvassing board minutes:))~~

(a) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.

~~((ii))~~ (b) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank party ballot (~~(of the same party the voter originally voted for))~~ and counted.

~~((iii))~~ (c) When a ~~((party ballot and nonpartisan ballot both have been returned with the nonpartisan offices and ballot measures))~~ voted nonpartisan ballot and a voted party ballot are both returned, and nonpartisan races and ballot measures were voted on both ballots, the nonpartisan and ballot measure votes that are the same on each ballot and the ~~((party))~~ partisan votes ~~((shall))~~ must be duplicated onto a blank party ballot and counted.

~~((iv) Write-in votes for a partisan candidate on a nonpartisan ballot must not be counted in the final write-in tally.~~

~~(v) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy, thereby affiliating with a major party, must not be counted in the final write-in tally.~~

~~(vi) If physically separate ballots are used and a voter returns more than one voted partisan ballot, no votes cast for candidates for partisan office shall be counted. If votes are cast for nonpartisan offices and/or ballot measures on only one of the partisan ballots, the nonpartisan votes must be counted. If votes are cast for nonpartisan offices and/or ballot measures on more than one party ballot, only those votes which are the same on each ballot shall be duplicated onto a nonpartisan ballot and counted.~~

~~(vii) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.~~

~~(b) For consolidated ballots:~~

~~(i) When voting a consolidated ballot, if the voter does not mark the party checkbox, votes cast for candidates for partisan office must not be counted but votes cast on the nonpartisan portion of the ballot shall be counted.~~

~~(ii) Write-in votes for a partisan candidate in a partisan office on the nonpartisan section of the ballot must not be counted in the final write-in tally.~~

~~(iii) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy shall not be counted in the final write-in tally.~~

~~(iv) If the voter marks one party checkbox, only those votes for candidates of that party shall count. Votes cast for candidates of other political parties must not be counted and do not cause over-votes.~~

~~Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule. The disposition of provisional ballots is governed by WAC 434-253-047.)~~ (d) When more than one voted party ballot is returned, the partisan votes may not be counted but the nonpartisan and ballot measure votes that are the same on both ballots must be duplicated onto a blank nonpartisan ballot and counted.

WSR 07-13-048

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-114—Filed June 14, 2007, 2:17 p.m., effective June 16, 2007]

Effective Date of Rule: June 16, 2007.

Purpose: Amend personal use 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: The dry weather has caused the flows in the Kalama to be drastically reduced. The flows are similar to late summer. Snagging of wild Chinook and wild steelhead is occurring regularly. These regulation

changes are needed to curtail illegal activities. 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: June 13, 2007.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Kalama River (Cowlitz Co.) Notwithstanding the provisions of WAC 232-28-619, effective June 16, 2007, until further notice, in those waters of the Kalama River from the mouth upstream to the lower salmon hatchery intake pipe, night closure and non-buoyant lure restrictions are in effect, and only fish hooked inside the mouth may be retained.

WSR 07-13-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-116—Filed June 14, 2007, 2:18 p.m., effective June 14, 2007, 2:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500V; and amending WAC 220-56-325 and 220-56-320.

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 is needed to ensure an orderly fishery, manage within court-ordered sharing requirements and to ensure conservation. Harvestable amounts of spot shrimp are available in the Hood Canal shrimp district and the southern portion of Marine Area 7. The emergency rule regarding mesh size restrictions in

Marine Area 12 is needed to protect the spot shrimp resource in that area. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 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: June 13, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-32500W Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective immediately until further notice:

1) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section.

(a) Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary:

a. Open to the harvest of all shrimp species except Spot shrimp. It is unlawful to possess Spot shrimp, and all Spot shrimp must immediately be returned to the water unharmed.

b. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(b) Effective 5:00 a.m., June 20, 2007, until 9:00 p.m., June 24, 2007, Marine Area 7 south of a line from the Initiative 77 marker on Fidalgo Island to Point Colville on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary, is open to the harvest of all shrimp species.

2) It is unlawful to fish for or possess shrimp taken for personal use in all waters of the Hood Canal Shrimp District (Marine Area 12), except open from 9:00 a.m. through 1:00 p.m., on June 23, 2007.

3) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 10 and the Discovery Bay Shrimp District.

4) All waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open daily to the harvest of all shrimp species except Spot shrimp. All Spot shrimp caught must be returned to the water immediately. It is

unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

5) All waters of Marine Areas 4 east of the Bonilla-Tatoosh line, and Marine Areas 5, 6 and 13 (excluding the Shrimp Districts), are open daily to the harvest of all shrimp species.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500V Shrimp—Areas and seasons
(07-103)

NEW SECTION

WAC 220-56-32000A Shellfish gear—Unlawful acts.

Notwithstanding the provisions of WAC 220-56-320, effective immediately until further notice:

1) It is unlawful to take, fish for or possess shrimp taken for personal use with shellfish pot gear during the month of June in Area 12, unless such gear meets the following requirements:

(a) The entire top, bottom, and sides of the shellfish pots must be constructed of mesh material and, except for the entrance tunnels, have the minimum mesh opening size defined below.

(b) The minimum mesh opening size for shrimp pots is defined as a mesh that a 7/8-inch square peg will pass through, in each mesh opening, except for flexible (web) mesh pots, where the opening must be a minimum of one and three-quarters inch stretch measure.

**WSR 07-13-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-117—Filed June 14, 2007, 2:19 p.m., effective June 14, 2007,
2:19 p.m.]

Effective Date of Rule: Immediately.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005)(Doc. No.

2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets a final spring salmon directed fishing period. The upriver run size has been upgraded to a run of 82,000 fish, which increases the available non-Indian impacts from 1.5% up to 2.0%. Impacts remain available to the commercial fishery. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. This rule is consistent with actions of the Columbia River compact hearings of June 13, 2007, and January 25, 2007, and conforms Washington and Oregon state rules. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005)(Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, 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: June 14, 2007.

J. P. Koenings
Director

NEW SECTION

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

1. Area: SMCRA 1D and 1E, specifically only in the area from the true north/south line through Light #50 near the mouth of the Sandy River upstream to the Marker 85, which is the lower boundary of the sturgeon spawning sanctuary, defined by a line from Marker 85 to a boundary sign on the Oregon shore.

a) Season: 9:00 p.m. Thursday June 14 through 5:00 a.m. Friday June 15, 2007.

b) Gear: Drift gill nets only. Eight inch minimum and 9 3/4 inch maximum mesh. Mono-filament is allowed. Gill nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required. Net length not to exceed 150 fathoms.

i. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net in excess of the lawful size or length prescribed for a single net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.

ii. Nets not lawful for use at that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

c) Allowable Sale: Adipose fin-clipped salmon, white sturgeon, and shad. An adipose fin-clipped salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. A maximum of 5 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The sturgeon limit of 5 fish applies only to the mainstream Columbia River. Green sturgeon retention is prohibited.

d) Miscellaneous Regulations:

i. At least one fisher on each boat must have tangle net certification.

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

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

iv. Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box and chamber shall be operating during any time that the net is being retrieved or picked. The flow in the recovery box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions, as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recovery box must include a water inlet hole of between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber, and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is a least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

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

vi. Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

vii. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

ix. Columbia River tangle net certification: This is any individual meeting the qualifications of RCW 77.65.040(2) and obtained a tangle net certificate by attending and completing a WDFW/ODFW sponsored workshop concerning live captive commercial fishing techniques.

x. Nothing in this section sets any precedent for any fishery after the 2007 spring Chinook fishery. The fact that an individual received a Columbia River tangle net certificate does not entitle the certificate holder to participate in any other fishery. If the department authorizes a tangle net fishery in any other time, the department may establish qualifications and requirements that are different from those established for 2007. In particular, the Department may consider

an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

2. Blind Slough/Knappa Slough Select Area

a) Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge

Knappa Slough is open to fishing in all waters bounded by a line from the northernly most marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to a north-south line defined by a marker on the eastern end of Minaker Island, to markers on Karlson Island and the Oregon shore.

b) Dates:

Spring Season: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays, immediately through until June 15, 2007.

During May 3 through June 15, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on the Karlson Island and the Oregon Shore (fall-season boundary).

c) Gear: Eight inch maximum mesh. Monofilament nets are allowed. Nets are restricted to 100 fathoms in length, with no weight restrictions on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable Sales: Salmon, sturgeon, and shad. A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

3. Deep River Select Area

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

b) Dates:

Spring seasons: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays, immediately through June 15, 2007.

c) Gear: Eight inch maximum mesh. Monofilament nets are allowed. Nets restricted to a maximum length of 100 fathoms, and no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off of any stationary structures. Nets may not fully cross the navigation channel.

d) Allowable sale: Salmon, white sturgeon, and shad. A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff.

Reviser's note: The spelling 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000H Columbia River seasons below Bonneville. (07-70)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 16, 2007:

WAC 220-33-01000I Columbia River seasons below Bonneville.

WSR 07-13-056

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 07-118—Filed June 15, 2007, 2:39 p.m., effective June 18, 2007, 6:00 a.m.]

Effective Date of Rule: June 18, 2007, 6:00 a.m.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets initial treaty fishery for summer season. An estimated 8,300 chinook are available for treaty harvest based on the pre-season forecast of 45,600 upper Columbia summer chinook. Allows the sale of fish caught in platform and hook and line fishery in Zone 6. Also allows the sale of fish caught in Yakama Nation tributary fisheries to be sold only when those tributaries are open under Yakama Nation rules and a commercial season in the mainstem is open concurrently. Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2005-2007 management agreement. Rule is consistent with action of the Columbia River compact on June 14, 2007. 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 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, 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: June 15, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-32-051001 Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1F, 1G, and 1H; and the Wind River, White Salmon River, Klickitat River, and Drano Lake, except that those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Open Periods: 6:00 a.m. June 18 until 6:00 p.m. June 20, 2007

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

b) Gear: Gillnets; 7-inch minimum mesh size restriction

2. Open Periods: 6:00 a.m. June 16, 2007, until further notice

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

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

3. Open Periods: 6:00 a.m. June 16, 2007 until further notice, and **only** during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fisheries for enrolled Yakama Nation members.

a) Open Areas: Wind, White Salmon, and Klickitat rivers

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

4. Allowable sale includes: Chinook, coho, steelhead, walleye, shad, and carp. Sockeye may be retained but not sold. Sturgeon between 45 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only.

Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

5) There will be no sanctuary in effect at Spring Creek National Fish Hatchery.

6) 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 they extend to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the break wall at the west end of the port of Hood River, and 1/2-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.

7) 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 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.

WSR 07-13-066

EMERGENCY RULES

DEPARTMENT OF PERSONNEL

[Filed June 18, 2007, 11:35 a.m., effective July 22, 2007]

Effective Date of Rule: July 22, 2007.

Purpose: These changes are a result of the passage of ESSB 5774. This bill removes the requirement for the department of personnel (DOP) to adopt background check rules for the department of social and health services and requires DOP to adopt background check rules for the department of early learning.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-183, 357-19-184, 357-19-185, 357-19-186, 357-19-187, 357-19-188, 357-19-189, and 357-19-191.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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

Reasons for this Finding: The department of early learning would not be able to hire employees to fill positions that have unsupervised access to children until these rules are in place. The effective date of ESSB [5774] is July 22, 2007.

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 8, 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 8, Repealed 0.

Date Adopted: June 14, 2007.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-183 Must (~~(DSHS)~~) DEL conduct background checks on all employees in covered positions and (~~(applicants under final consideration)~~) individuals being considered for a covered position? (1) The (~~(secretary of the department of social and health services (DSHS))~~) director of the Department of Early Learning (DEL) or designee must conduct background checks(~~(, which may include fingerprinting as authorized by statute,))~~) on all employees in covered positions and (~~(applicants under final consideration)~~) individuals being considered for a covered position.

(2) The requirement for background checks must include the following:

(a) Current employees in covered positions.

~~((a))~~ (b) Any employee (~~(seeking)~~) considered for a covered position because of a layoff, reallocation, transfer, promotion or demotion, or other actions that result in the employee being in a covered position.

(c) Any individual being considered for positions which are covered positions. (~~(applicant prior to appointment into a covered position, except when appointment is made on a conditional basis in accordance with agency procedures authorized by WAC 357-19-189.))~~

~~(3) (~~(Applicant means any person who has applied for work or serves in a covered position, including current employees requesting transfer, promotion, demotion, or otherwise requesting a move to a covered position.))~~ Considered for positions includes decisions about:~~

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-184 Besides the (~~(department of social and health services)~~) DEL, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees? (1) Employers may conduct background checks on applicants and/or employees if required by state or federal law, or if the employer identifies the need for a background check to verify that the applicant or employee satisfies the position requirements.

(2) Employers who conduct background checks must develop procedures regarding how and when background checks will be conducted. The procedures must include notification to applicants and/or employees if a background check is required.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-185 What is a covered position for purposes of WAC 357-19-183, WAC 357-19-187, and WAC 357-19-191? For purposes of WAC 357-19-183, WAC 357-19-187 and WAC 357-19-191 a covered position is one in which a person will or may have unsupervised access to children, ~~(vulnerable adults, or individuals with mental illness or developmental disabilities).~~

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

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by ~~(DSHS)~~ DEL and what are the results of the background check used for? (1) The background check information considered by the ~~((secretary of the DSHS))~~ director of the DEL will include but not be limited to conviction records, pending charges, and disciplinary board final decisions.

(2) The results of the background check must be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or ~~((applicant))~~ individual being considered for a covered position authorize the ~~((secretary of the department of social and health services))~~ director of the DEL or designee to conduct a background check and what happens if the employee or ~~((applicant))~~ individual being considered for a covered position does not provide authorization? An employee and/or ~~((applicant))~~ individual applying for or being considered to remain in a covered position must authorize the ~~((secretary of the department of social and health services))~~ director of the DEL or designee to conduct a background check ~~((which may include fingerprinting)).~~

Failure to authorize the ~~((secretary of the DSHS))~~ director of the DEL or designee to conduct a background check disqualifies an employee or ~~((applicant))~~ individual from consideration for any covered position including their current covered position.

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

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-188 What happens when a permanent ~~(DSHS)~~ DEL employee is disqualified because of a background check? (1) A permanent employee with a background check disqualification may be subject to any of the following actions in no specific order:

- (a) Voluntary demotion;
- (b) Job restructuring;
- (c) Voluntary resignation;
- (d) Job reassignment;
- (e) Nondisciplinary separation in accordance with WAC 357-46-195; or
- (f) Disciplinary action in accordance with WAC 357-40-010.

(2) An appointing authority may use the following interim measures while exploring the availability of actions (not to exceed thirty calendar days except in cases where there are investigations of pending charges):

- (a) Voluntary use of accrued vacation, exchange, and/or compensatory time;
- (b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or
- (c) Reassignment to another work location.
- (d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated due to a background check disqualification, the search for a non-covered position will occur over a period of thirty calendar days.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-189 What are the responsibilities of the ~~((secretary of the DSHS))~~ director of the DEL in carrying out the requirement to conduct background checks? (1) In order to implement the requirements of WAC 357-19-183, the ~~((secretary of the DSHS))~~ director of the DEL or designee must:

(a) Notify employees and ~~((applicants))~~ individuals being considered for covered positions that a background check is required for covered positions; and

(b) ~~((Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and))~~ Develop policies and procedures pertaining to background checks.

~~((c) Develop policies and procedures pertaining to background checks.))~~

(2) Information contained in background checks must be used solely for the purpose of determining the character, suitability and competence of the ~~((applicant and/or employee))~~ employee and/or individual being considered for covered positions. The information must not be disseminated further. Dissemination and use of such information is governed by the criminal records privacy act, chapter 10.97 RCW. Unlawful dissemination of information protected by the criminal records privacy act is a criminal offense and may result in prosecution and/or disciplinary action as provided in chapter 357-40 WAC. However, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-191 Does a permanent employee of ((~~DSHS~~) DEL who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A permanent employee of ((~~DSHS~~) DEL who is disqualified from a covered position as a result of a background check has the right to present to the ((~~secretary of the DSHS~~) director of the DEL or designee evidence that mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

- (1) The employee's background check authorization and disclosure form;
- (2) The employee's age at the time of conviction, charge, or disciplinary board final decision;
- (3) The nature and severity of the conviction, charge, or disciplinary board final decision;
- (4) The length of time since the conviction, charge, or disciplinary board final decision;
- (5) The nature and number of previous offenses;
- (6) Vulnerability of the child(~~(-vulnerable adult, or individual with mental illness or developmental disabilities))~~) to which the employee will or may have unsupervised access; and
- (7) The relationship between the potentially disqualifying event and the duties of the employee.

WSR 07-13-069

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed June 18, 2007, 1:10 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: To amend the 2006 International Residential Code, WAC 51-51-0404 related to lateral support for basement foundation walls.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0404.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW.

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

Reasons for this Finding: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council adopted the 2006 edition of the International Residential Code (IRC) effective July 1, 2007. The IRC regulates the construction of one and two family residences and townhouses. The 2006 IRC contains new provisions related to a requirement for lateral restraint at the top of concrete and masonry foundation walls, which the council initially amended to require only in the case of walls over five feet in height. Upon further review, the council determined the new requirement would still impose significant and potentially unnecessary attachment and blocking requirements to basement walls that exceed five feet, and would cause unnecessary economic burden on the building industry in Washington.

There has been considerable debate on this issue both in the state and at the national level. Council appointed a technical advisory group to review the issue. The group reported back to the council that there have been no failures of foundation walls in Washington state built under the previous requirements. The failures that have occurred can be traced back to other faulty construction practices. The technical advisory group felt there was no technical substantiation for the increase in cost associated with the new requirements for lateral restraint of foundation walls. At the final action hearing of the International Code Council, the membership also concurred with Washington's technical advisory group and voted to remove these additional provisions from the national model code.

The council concluded that it is in the best interest of the general welfare of the state of Washington to amend the provisions related to lateral restraint of foundation walls in Section R404 of the IRC with the language adopted by the membership of the International Code Council for inclusion in the 2009 edition of the IRC.

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 1, Repealed 0.

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

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

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

Date Adopted: June 8, 2007.

John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0404 Section R404—Foundation and retaining walls.

R404.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls shall be selected and constructed in accordance with the provisions of Section R404 or in accordance with ACI 318, ACI 332, NCMA TR68-A or ACI 530/ASCE 5/TMS 402 or other approved structural standards. When ACI 318, ACI 332 or ACI 530/ASCE 5/TMS 402 or the provisions of Section R404 are used to design concrete or masonry foundation walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for the design, unless otherwise required by the state law of the jurisdiction having authority.

~~(Foundation walls that meet all of the following shall be considered laterally supported:~~

~~1. Full basement floor shall be 3.5 inches (89 mm) thick concrete slab poured tight against the bottom of the foundation wall.~~

~~2. Floor joists and blocking shall be connected to the sill plate at the top of the wall by the prescriptive method called out in Table R404.1(1), or, shall be connected with an approved connector with listed capacity meeting Table 404.1(1).~~

~~3. Bolt spacing for the sill plate shall be no greater than per Table R404.1(2).~~

~~4. Floor shall be blocked perpendicular to the floor joists. Blocking shall be full depth within two joist spaces of the foundation wall, and be flat blocked with minimum 2-inch by 4-inch (51 mm by 102 mm) blocking elsewhere.~~

~~5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W , shall not exceed the value specified in Table R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20 gage metal angle clip at 24 inches (610 mm) on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.36 kN/m) capacity.~~

~~EXCEPTION: Foundations constructed entirely of concrete with stem walls not exceeding 5 feet (1524 mm) in height and supporting less than 4 feet (1220 mm) of unbalanced backfill are exempt from the lateral bracing requirements of Section R404.1.)~~

Tables R404.1(1), R404.1(2), and R404.1(3) are not adopted.

**TABLE R404.1.1(3)
10-INCH MASONRY FOUNDATION
WALLS WITH REINFORCING
WHERE $d > 6.75$ INCHES^a**

(no changes to Table R404.1.1(3) or footnotes)

R404.3 Wood sill plates. Wood sill plates shall be a minimum of 2-inch by 4-inch nominal lumber. Sill plate anchorage shall be in accordance with Sections R403.1.6 and R602.11.

WSR 07-13-070

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed June 18, 2007, 1:12 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: To amend the 2006 International Building Code (IBC), chapter 51-50 WAC related to structural design and the use of ASCE 7, Minimum Design Loads for Buildings and Other Structures, published by the American Society of Civil Engineers.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW.

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

Reasons for this Finding: The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council's adoption of chapter 51-50 WAC, the 2006 edition of the IBC, published by the IBC, will take effect July 1, 2007. After adoption of this code document, it was found that there was a significant technical error in one of the referenced documents used to calculate structural seismic design loads. The referenced standard is currently going through the process of making the correction. In the interim, the council determined that it was necessary to make these technical corrections to the 2006 IBC. Immediate adoption of this amendment is necessary so that structural engineers will have proper guidance for determining earthquake loads in building design.

The council concluded that it is in the best interest of the general safety and welfare of the state of Washington to amend the provisions related to ASCE 7-05 concerning seismic design loads and include these amendments as WAC 51-50-1613.

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 1, 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 1, Amended 0, Repealed 0.

Date Adopted: June 8, 2007.

John P. Neff
Council Chair

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: June 19, 2007.

J. P. Keonings [Koenings]
Director

NEW SECTION

WAC 51-50-1613 Section 1613—Earthquake loads.

1613.7 Modification of ASCE 7. ASCE 7-05 including Supplement #1 is modified according to this section.

1613.7.1 The following equations found in Section 12.8 and Section 15.4 expressing limitations for the seismic response coefficient C_s shall be defined as follows:

$$\text{Equation 12.8-5} \quad C_s = 0.044S_{Ds}I \geq 0.01$$

$$\text{Equation 15.4-1} \quad C_s = 0.044S_{Ds}I \geq 0.03$$

$$\text{Equation 15.4-3} \quad C_s = 0.044S_{Ds}I \geq 0.01$$

WSR 07-13-093

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-115—Filed June 19, 2007, 3:34 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-20-100.

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 department of fish and wildlife is in the process of adopting permanent rules that are necessary to implement the fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. This emergency rule is necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

NEW SECTION

WAC 220-20-10000A General provisions—Marine protected areas. Notwithstanding the provisions of WAC 220-20-100, effective July 1, 2007, until further notice, Yellow and Low Island preserve is closed to the taking of food fish.

WSR 07-13-094

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-119—Filed June 19, 2007, 3:34 p.m., effective June 22, 2007, 7:00 a.m.]

Effective Date of Rule: June 22, 2007, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-04600F, 220-52-04000J and 220-52-04600H; and amending WAC 220-52-040 and 220-52-046.

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 limited commercial fishery in these Marine fish - Shellfish management and catch reporting areas is to take advantage of harvest opportunity and to maintain commercial harvest allocations plans. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 3.

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: June 18, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-04000J Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040, effective 7:00 a.m. June 22, 2007, through 7:00 p.m. June 23, 2007, it is unlawful for any person to fish for crabs for commercial purposes with more than 35 pots per license, per buoy tag number, in all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C and 26A-E.

NEW SECTION

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

(1) Effective 7:00 a.m. June 22 through 7:00 p.m. June 23, 2007, a person may fish for Dungeness Crab for commercial purposes in Marine Fish Shellfish Catch Areas 24A, 24B, 24C and 26A-E.

(2) Effective 7:00 a.m. June 22 through 7:00 p.m. June 23, 2007, a person may fish for Dungeness Crab for commercial purposes in those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.

(3) All other provisions of WAC 220-52-046 remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 7:00 a.m. June 22, 2007:

WAC 220-52-04600F Crab fishery—Seasons and areas. (07-41)

The following sections of the Washington Administrative Code are repealed, effective 7:01 p.m. June 23, 2007:

WAC 220-52-04000J Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.

WAC 220-52-04600H Crab fishery—Seasons and areas.

WSR 07-13-095

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-120—Filed June 19, 2007, 3:34 p.m., effective June 25, 2007, 7:00 p.m.]

Effective Date of Rule: June 25, 2007, 7:00 p.m.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets fishing periods for summer Chinook commercial season. Commercial fisheries were allocated 1,650 summer Chinook based on the preseason forecast of 45,600 fish, the *US v Oregon* 2005-2007 bridge agreement and DFW commission guidance. Harvestable upper Columbia summer Chinook and sturgeon are available. Season is consistent with the 2005-2007 interim management agreement, the 2007-2009 sturgeon fishery management plan and the draft Upper Columbia management plan. Regulation is consistent with compact action of January 25, 2007, and June 14, 2007. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, 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: June 19, 2007.

J. P. Koenings
Director

NEW SECTION

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

AREA: SMCRA 1A, 1B, 1C, 1D, and 1E.

SEASON: 7:00 p.m. Monday June 25 to 5:00 a.m. Tuesday June 26, 2007; 7:00 p.m. Monday July 2 to 5:00 a.m. Tuesday July 3, 2007; 7:00 p.m. Monday July 9 to 5:00 a.m. Tuesday July 10, 2007.

GEAR: Eight inch minimum mesh and 9-3/4 inch maximum mesh.

ALLOWABLE SALE: Chinook, coho, shad, and white sturgeon. All steelhead, sockeye and green sturgeon must be released immediately. A maximum of five white sturgeon may be possessed or sold by each participating vessel during

each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

SANCTUARIES: Grays River, Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal and Sandy Rivers.

OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 5:01 a.m. July 10, 2007:

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

WSR 07-13-096 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-121—Filed June 19, 2007, 3:34 p.m., effective June 19, 2007,
3:34 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The emergency closure for the retention of adult hatchery spring Chinook in this section of the river is no longer necessary. The return of spring Chinook is now tracking at or slightly above preseason expectations. Coordination with the Yakama Nation has occurred, and the tribal fishery will be open during the month of June as well. 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: June 18, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-35400G 2007 Elk special permits. Notwithstanding the provisions of WAC 232-28-354, change the number of permits to 7 on the modern firearm bull permit hunt Nooksack A, valid for dates Oct. 13 to Nov. 11, for any bull, in GMU 418.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900S Exceptions to statewide rules—Klickitat River. (07-104)

**WSR 07-13-103
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-122—Filed June 20, 2007, 11:25 a.m., effective June 20, 2007, 11:25 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-354.

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: Increasing the number of permits in Nooksack A is necessary to maximize harvest within levels supported under state/tribal agreement and are consistent with the North Cascade Elk Herd Plan.

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: June 20, 2007.

Morris Barker
for Jeff Koenings
Director