

WSR 08-10-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-83—Filed April 23, 2008, 2:48 p.m., effective April 23, 2008, 2:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000V; and amending WAC 220-52-040.

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: Severe winter storms resulted in commercial crab gear being scattered from its original location. A provision to allow this gear to be recovered is a conservation measure that will reduce the accumulation of lost and derelict gear in the ocean. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 23, 2008.

J. P. Koenings
 Director

NEW SECTION

WAC 220-52-04000V Coastal crab fishery—Lawful and unlawful gear. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately through May 31, 2008, it is unlawful to remove, retrieve, or possess commercial crab gear belonging to another, except as provided in this section:

(a) Licensed Coastal Dungeness crab operators may retrieve and possess another's commercial crab gear under the following conditions: The license owner or designated alternate operator must first sign the 2008 Coastal Crab Gear Recovery Permission Letter indicating his or her intent to participate in the derelict-gear removal program. The department will then compile an official list of all program participants. Licensed Dungeness crab operators must have, aboard

the vessel when retrieving another's derelict commercial crab gear, a copy of this official list.

(b) Licensed Coastal Dungeness crab operators may only retrieve and remove derelict commercial crab gear from the waters of the Pacific Ocean between the mouth of the Columbia River (46°15.00.N) and Point Chehalis, Washington (46°53.30.N).

(c) Licensed Coastal Dungeness crab operators who retrieve and remove derelict commercial crab gear must immediately record in their Washington Coastal Dungeness Crab logbook, by latitude and longitude, the location of each pot retrieved.

(d) Licensed Coastal Dungeness crab operators who retrieve and remove derelict commercial crab gear must attempt to contact the lawful owner and make arrangements to return the gear within six weeks of retrieving and removing the gear. If an operator cannot meet this deadline, or if no owner claims the gear or can be found, the operator must call department biologist Brandon Bryant at (360) 249-4628, extension 229, by the end of the seventh week after retrieving and removing the gear.

(2) Coastal commercial Dungeness license owners and designated alternate operators must return all original copies of the 2008 Coastal Crab Gear Recovery Permission Letter by May 1, 2008, to WDFW's Region 6 Office, 48 Devonshire Rd, Montesano, WA 98563.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 1, 2008:

WAC 220-52-04000V	Coastal crab fishery—Lawful and unlawful gear.
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WSR 08-10-005
EMERGENCY RULES
DEPARTMENT OF TRANSPORTATION

[Filed April 24, 2008, 8:24 a.m., effective April 24, 2008, 8:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: SSB 6794 is emergency legislation authorizing the new construction of small auto ferries. The legislation was signed into law on February 14, 2008, and took effect immediately. These WAC rule revisions modify the financial prequalification requirements for this new ferry procurement, and are a refinement of prior WAC rule revisions filed as WSR 08-05-100 on February 15, 2008. The rule changes are required in order to promote the competitive process by increasing the number of potential bidders thereby maximizing competition.

Citation of Existing Rules Affected by this Order: Amending WAC 468-310-020.

Statutory Authority for Adoption: Chapter 47.56 RCW, RCW 47.60.680 and 47.60.690.

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: SSB 6794 is new emergency legislation. The rebid of the vessel procurement resulting from the legislation is scheduled to begin in late April 2008. The proposed revisions to WAC 468-310-020 will further implement such legislation by maximizing shipyard competition for the construction of the new ferry. The subject WAC rule revisions must take effect immediately in order to timely commence the prequalification and rebid process.

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

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

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

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

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

Date Adopted: April 21, 2008.

April 22, 2008

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending WSR 04-11-004, filed 5/5/04, effective 6/5/04)

WAC 468-310-020 Contents of standard prequalification questionnaire and financial statement. The standard prequalification questionnaire and financial statement shall be transmitted to the director of Washington state ferries. The contractor shall provide the following information:

(1) The name, address, phone number, contractor registration number and type of organization (corporation, copartnership, individual, etc.) of the contractor seeking prequalification.

(2) The contract size in dollars and the class or classes of work for which the contractor seeks prequalification (such as vessel dry-docking and hull repairs, vessel electrical repairs, etc.) as enumerated in WAC 468-310-050(6).

(3) Ownership of the contractor and if a corporation, the name of the parent corporation (if any) and any affiliated companies or subsidiaries.

(4) An accurate and complete record of the fifteen largest contracts in excess of ten thousand dollars performed by the contractor in whole or in part within the preceding three years both in Washington and elsewhere, including subcontracts, giving the contract amount, the date completed, the class of work, the name, address and phone number of the owner/agency representative, and any liquidated damages assessed against the contractor by an owner arising out of the performance of the contract.

(5) The principal officers and key employees showing the number of years each engaged in the class or classes of work for which the contractor seeks prequalification. The department may require resumes of such personnel as deemed proper for making its determination.

(6) Except as otherwise provided in this section or WAC 468-310-050(8), a contractor requesting prequalification certification to perform work in excess of ten million dollars shall submit copies of its audited annual statements for the previous three years as audited by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The financial statement shall not be more than twelve months old when submitted. Any wholly owned subsidiary corporation may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for such subsidiary providing the financial statement otherwise meets the requirements of the preceding two sentences. If a consolidated financial statement is filed on behalf of a subsidiary corporation, a bid of the subsidiary corporation will be considered only if there is on file with the department a letter from the parent corporation guaranteeing performance by the subsidiary corporation of its contract with the department of transportation in an amount at least equal to the amount of the bid. A letter of guarantee by a parent corporation may cover a specific contract bid by its subsidiary or all contracts bid by its subsidiary within a stated period of time.

(7) A list of all major items of equipment to be used in those classes of work for which prequalification certification is requested including the original cost, age, location and condition of such equipment. The schedule shall show whether the equipment is owned, leased or rented. All major items of useful equipment should be listed even though fully depreciated but no obsolete or useless equipment should be included. In the event the contractor seeks prequalification certification to perform work on ferry vessels, the schedule shall also describe plant facilities of the contractor including shipyards, dry docks, repair facilities and other plant facilities.

(8) Such other information as may be required by the prequalification questionnaire.

(9) Notwithstanding the provisions of this section, a contractor who wishes to prequalify for the department's procurement of new auto ferries for the Port Townsend/Keystone ferry route, pursuant to the department's 2008 invitation for bids, shall submit a reviewed financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The reviewed financial statement shall be prepared by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the department's invitation for bids and is subject to modification by addendum during the bid process. This subsection applies in lieu of the form and quantity of audited financial statements specified in subsection (6) of this

section for the Port Townsend/Keystone vessel procurement only. It does not replace or modify any other provisions in this chapter or governing prequalification statutes that authorize the department to evaluate a contractor's financial ability to perform the contract.

AMENDATORY SECTION (Amending WSR 04-11-004, filed 5/5/04, effective 6/5/04)

WAC 468-310-050 Classification and capacity rating. (1) Except as otherwise specified in this section, each contractor seeking prequalification under these rules will be classified for one or more of the classes of work listed in subsection ((8)) (6)(a) of this section and will be given a maximum capacity rating in accordance with its financial ability, the adequacy of its equipment and plant facilities to perform the class or classes of work for which it has sought prequalification, the extent of the contractor's experience in performing contracts of the class or classes for which prequalification is sought, and the adequacy of the experience and capability of the contractor's officers and key employees in performing contracts of the class or classes for which prequalification is sought. The maximum capacity rating will limit the quantity of uncompleted work which the contractor shall have under contract at any one time either as a prime contractor or a sub-contractor.

(2) Except as provided in subsections (7) through (9) of this section, the maximum capacity rating for a contractor applying for a rating in excess of fifty thousand dollars will be ten times the contractor's net worth as set forth in the standard prequalification questionnaire and financial statement. A properly executed letter of credit from an acceptable financial institution may be considered as an asset increasing the contractor's maximum capacity rating by the amount of the credit, but without the use of a multiplier. The maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars: Provided, That in all cases the contractor's maximum capacity rating may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant, and experience.

(3) Consideration will be given to raising, by an amount not to exceed fifty percent, the maximum capacity rating of a contractor who qualifies with respect to actual capacity based upon organization, personnel, equipment and plant facilities, and experience, upon receipt of evidence of a current bonding capacity of such additional amount with a corporate surety. Such evidence shall be in the form of a letter of commitment executed by an officer of the surety who is authorized to bind the surety. Notwithstanding the provisions of this subsection, the maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars.

(4) The certificate of prequalification issued by the department will establish a contractor's maximum capacity rating which will be subject to reduction by the total value of its current uncompleted work regardless of its location and with whom it may be contracted to determine the contractor's bidding capacity at the particular time.

(5) Notwithstanding the provisions of this section, a contractor will be allowed to submit a bid for an amount up to \$50,000 on a class or classes of work for which it is prequalified without regard to any financial maximum capacity rating or financial current capacity rating: Provided, That the contractor's current capacity may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant facilities, and experience.

(6)(a) Construction, repair and maintenance work on ferry vessels for which prequalification certification under these rules may be granted are classified as follows:

Class 81	Vessel construction and renovation;
Class 82	Dry-docking and hull repairs;
Class 83	Vessel metal fabrication repairs;
Class 84	Vessel electrical repairs;
Class 85	Vessel miscellaneous repairs;

(b) A contractor currently prequalified under RCW 47.28.070 to perform those classes of work required in the construction, improvement and repair of ferry terminal facilities will initially be deemed prequalified under these rules to perform such classes of work with the same capacity rating as approved by the department for highway related work.

(7) Notwithstanding the provisions of this section, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, must submit evidence of their ability, if awarded the contract, to obtain contract security in the amount of thirteen million dollars. The department estimates such amount to be adequate to protect one hundred percent of the department's estimated exposure to loss on the vessel construction contract, as calculated by the department prior to issuance of the request for proposals. Such amount shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. The actual contract security amount for the project construction contract will be a percentage of the successful proposer's total bid price. Such percentage shall be specified in the construction contract within the request for proposals. For the new 130-auto ferries contract, this provision applies in lieu of the maximum capacity rating formula specified in subsection (2) of this section.

(8) Notwithstanding the provisions of this section or WAC 468-310-020, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, shall, in addition to the evidence of contract security required in subsection (7) of this section, submit an audited financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The audited financial statement shall be performed by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. For the new 130-auto ferries contract, this

provision applies in lieu of the quantity of audited financial statements specified in WAC 468-310-020.

(9) This subsection shall apply to the Port Townsend/Keystone vessel procurement only and shall be used in lieu of the requirements of subsections (1) through (5) of this section. It does not replace or modify any other provisions in this chapter or governing prequalification statutes. The department may prequalify a contractor under a Class 81 classification to bid on the Port Townsend/Keystone vessel procurement pursuant to this section based on the department's evaluation of the following criteria:

(a) Whether the contractor has adequate equipment and plant facilities available to accomplish the work;

(b) Whether the contractor has trained personnel available to perform the work;

(c) Whether the contractor has demonstrated experience in the type of work;

(d) Whether the contractor has an organization and technical staff with the size, training, experience and capability to accomplish the work;

(e) Whether the contractor has adequate financial resources to perform the type and size of work, or the ability to timely secure such resources. In evaluating such financial resources, the department may consider the contractor's overall financial condition including, but not limited to:

(i) Level of capitalization;

(ii) Cash flow;

(iii) Level of business activity;

(iv) Credit history;

(v) Debts;

(vi) Assets; and

(vii) Ability to obtain financing, including but not limited to, irrevocable lines of credit, and parent company guarantees.

A contractor does not have adequate financial resources when, based upon the totality of the circumstances, it lacks the financial resources reasonably expected of a contractor capable of performing the work on time and without interruption.

WSR 08-10-010
EMERGENCY RULES
SECRETARY OF STATE
(Elections Division)

[Filed April 24, 2008, 3:28 p.m., effective April 24, 2008, 3:28 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to implement candidate filing for the 2008 primary and general elections.

Citation of Existing Rules Affected by this Order: Amending WAC 434-215-012 and 434-215-020.

Statutory Authority for Adoption: RCW 29A.24.031.

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: On March 18, 2008, the United States Supreme Court issued *Washington State Grange v. Washington State Republican Party, et al.* 552 U.S. _____, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008). In this opinion, the court reversed a Ninth Circuit opinion that had declared Washington's top two primary system unconstitutional. The impact of this ruling is that the primary system enacted by Initiative 872 (chapter 2, Laws of 2005) is now in effect. This change in primary election systems necessitates a change in the declarations of candidacy. Pursuant to RCW 29A.24.081, the secretary of state's office and county auditors may begin to accept declarations of candidacy beginning May 16, 2008. Therefore, approximately 1,600 copies of the declaration of candidacy must be printed and distributed to the forty filing offices in time for candidates to pick up the declarations starting May 12, 2008. There is insufficient time to adopt these rules through the standard rule-making process. The secretary of state's office did send a draft of the proposed rules to stakeholders and interested parties on April 16, 2008, and accepted public comment through April 22, 2008.

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 2, Repealed 0.

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

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

Date Adopted: April 24, 2008.

Steve Excell
Assistant Secretary of State

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

WAC 434-215-012 Declaration of candidacy—Offices subject to a primary. Declarations of candidacy ((for all partisan and nonpartisan offices)) filed either in person or by mail shall be in substantially the following form:

((STRICKEN GRAPHIC))

FILING DATA . . . FOR OFFICE USE ONLY

Date _____ Fee Paid \$ _____ File No. _____ Office Code _____
[] Check [] Debit/Credit
[] Cash [] Filing Fee Petition Voter Registration # _____ Clerk Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. (STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP CODE)
(MAILING ADDRESS) (CITY) (COUNTY) (ZIP CODE)
(TELEPHONE NUMBER) (EMAIL ADDRESS)

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for the office of:
(NAME OF OFFICE)
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)
(PPOSITION NUMBER IF APPLICABLE) (DIRECTOR OR COMMISSIONER DISTRICT, IF ANY)

4. For the following term of office:
[] A full term or a full term and a short term, or
[] An unexpired term

5. This office is:
[] Nonpartisan, or
[] Partisan, and I am (check one): [] a candidate of the _____ party, or
[] an independent candidate.

6. Filing Fee (check one):
[] There is no filing fee because the office has no fixed annual salary, or
[] I am submitting a filing fee of \$10 because the fixed annual salary of the office is \$1,000 or less, or
[] I am submitting a filing fee of \$_____, an amount equal to 1% of the annual salary, or
[] I am without sufficient assets or income to pay the filing fee required by law and I have attached a filing fee petition in lieu of this fee, pursuant to RCW 29A.24.091.

7. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.
Note: Your signature must be personally attested to either by a notary public or by the officer with whom the declaration is filed.
8. Sign Here X _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)
STATE OF WASHINGTON, COUNTY OF _____
SIGNED OR ATTESTED BEFORE ME ON _____
(DATE)
by _____
(CANDIDATE)
(SIGNATURE OF NOTARY)
(TITLE)
MY APPOINTMENT EXPIRES _____

SSE 84-1 (2006)

Candidate: Return all copies of this declaration to your Elections Dept.
Distribution by Elections Dept: White—County; Yellow—PDC; Pink—Candidate

STRICKEN GRAPHIC))

FOR OFFICE USE ONLY			
Date _____	Fee Paid \$ _____	Filing No. _____	Office Code _____
<input type="checkbox"/> Check	<input type="checkbox"/> Debit/Credit		
<input type="checkbox"/> Cash	<input type="checkbox"/> Filing Fee Petition	Voter Registration # _____	Clerk Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. _____
(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP)

- and, at the time of filing this declaration, I am legally qualified to assume office if elected.

3. My campaign contact information is:

(MAILING ADDRESS) (CITY) (STATE) (ZIP)

(TELEPHONE NUMBER) (EMAIL ADDRESS)

4. I declare myself as a candidate for the office of:

(NAME OF OFFICE including DISTRICT or POSITION NUMBER)

(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

5. **Filing Fee** (check one):
 There is no filing fee because the office has no fixed annual salary;
 I am submitting a filing fee of \$10 because the fixed annual salary of the office is \$1,000 or less;
 I am submitting a filing fee of \$ _____, an amount equal to 1% of the annual salary; or
 I am without sufficient assets or income to pay the filing fee and am submitting a filing fee petition in lieu of this fee.

6. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

7. If the office is partisan, your party preference, if any, will be printed on the ballot exactly as follows:
 (Prefers Party) or
 (States No Party Preference)

If you fail to check a box or provide a party name, "(States No Party Preference)" will be printed.

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by a notary public or by the officer with whom the declaration is filed.

8. Sign Here X _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

STATE OF WASHINGTON, COUNTY OF _____
(SEAL OR STAMP)

Signed or Attested before me on _____
(DATE)

by _____
(CANDIDATE)

(SIGNATURE OF NOTARY)

(TITLE)

MY APPOINTMENT EXPIRES: _____

Candidate: Return all copies to your Elections Dept.
Distribution: White—County; Yellow—PDC; Pink—Candidate

((The form shall measure eight and one-half inches by eleven inches and be printed on paper stock of good quality. The form shall also contain space for recording the date and time of filing and a sequential filing and receipt number. One copy of the form or an electronic file, in a format approved by the secretary of state and acceptable to the public disclosure commission, containing the information on the form of each properly executed and filed declaration and affidavit of candidacy

shall be forwarded to the public disclosure commission as required by RCW 29A.24.070, and one copy of the form or an electronic file containing the information on the form of each properly executed and filed declaration and affidavit of candidacy shall be returned to the candidate.)) The filing officer must provide a paper or electronic copy of the filed declaration of candidacy to the candidate and to the public disclosure commission.

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-215-020 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the ((office)) position of precinct committee officer((-)) shall be filed in substantially the following form:

((STRICKEN GRAPHIC _____))

Filing Data For Office Use Only

Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid By (check one)			
<input type="checkbox"/> Check	<input type="checkbox"/> Cash	<input type="checkbox"/> Other	Clerk/Cashier Initials _____ Voter Registration # _____

DECLARATION OF CANDIDACY
PRECINCT COMMITTEE OFFICER

I, _____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) WA (ZIP CODE)

(MAILING ADDRESS) (CITY) (COUNTY) WA (ZIP CODE)

(TELEPHONE NUMBER) (EMAIL ADDRESS)

that, at the time of filing this declaration, I am a registered voter in _____ precinct and that I am legally qualified to assume office if elected; that I hereby declare myself a candidate for the office of Precinct Committee Officer to be elected at the Primary Election, and hereby request that my name be printed upon the official Primary Election ballot as a candidate of the _____ party, and:

I am submitting the sum of one dollar, the fee required by RCW 29A.24.091.

Please print my name on the ballot **exactly** as follows: _____

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X _____
(SIGNATURE OF CANDIDATE) (DATE)

STRICKEN GRAPHIC))

<i>Filing Data For Office Use Only</i>			
Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid by: <input type="checkbox"/> Check <input type="checkbox"/> Cash		Staff Initials _____	Voter Registration ID _____

DECLARATION OF CANDIDACY PRECINCT COMMITTEE OFFICER

1. I, _____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

(STREET ADDRESS OR RURAL ROUTE) (CITY) WA (ZIP)

that I am a registered voter in _____ precinct, that I declare myself a candidate for the position of Precinct Committee Officer for the _____ Party, (DEMOCRATIC / REPUBLICAN) to be elected at the Primary Election, and I am paying the filing fee of one dollar required by RCW 29A.24.091.

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X _____
(SIGNATURE OF CANDIDATE) (DATE)

Contact Information: _____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

(MAILING ADDRESS, IF DIFFERENT FROM RESIDENTIAL ADDRESS)

2. Please print my name on the ballot exactly as follows:

4/16/08

~~((The forms shall measure eight and one-half inches by eleven inches and be printed on paper stock of good quality. The form may also contain space for recording the date and time of filing, a receipt number, if applicable, and a sequential filing number.))~~ County auditors may design and use a declaration of candidacy different in form and style from that

specified by this rule as long as it contains all of the information required by this rule.

WSR 08-10-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-84—Filed April 25, 2008, 8:57 a.m., effective May 1, 2008]

Effective Date of Rule: May 1, 2008.
 Purpose: Amend commercial rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable white sturgeon are available within the Willapa Bay management guideline for a commercial fishery. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: April 25, 2008.

J. P. Koenings
 Director

NEW SECTION

WAC 220-40-03100D Willapa Bay spring white sturgeon fishery. Notwithstanding the provisions of WAC 220-40-031, effective May 1, 2008, until further notice, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that

Fishing periods

(1) Gill net gear may be used to fish for sturgeon:

Time	Area
12:01 a.m. May 1 through 11:59 p.m. May 7, 2008	Area 2G easterly of a line from the most northerly upland at Leadbetter Point (approximately 46 degrees 39' N) to the eastern most upland at Toke Point (approximately 123 degrees 58' W); and areas 2H, 2J and 2M.

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

Gear

(2) Gill net gear restrictions - All areas:

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

(b) May 1 through May 7, 2008 - 9-inch minimum mesh.

(c) Each boat will be required to have two operable recovery boxes or one box with two chambers. Each box 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 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 at 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 department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(d) All chinook, non-legal sturgeon, and steelhead must be handled with care to minimize injury to fish and released immediately to the river/bay or to an operating recovery box.

(e) Any Chinook or steelhead that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(f) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other

(3) Quick reporting is required for wholesale dealers and fishers retailing their fish (WAC 220-69-240) by 10 am the day following landing.

(4) Fishers must allow WDFW staff on-board as observers if required by WDFW staff when participating in these openings.

(5) Notice of Intent to Participate to Quick Reporting by phone, fax or email, WAC 220-69-240, prior to 10:00 a.m. April 29th, 2008 for the May 1-7, 2008 opening and prior to 10:00 a.m. May 7, 2008 if extended from May 8 - 15, 2008.

(6) Green sturgeon retention is prohibited.

(7) Report ALL encounters of Chinook, Green Sturgeon and Steelhead (Your name, Date of encounter, and Number of species encountered) to Quick Reporting by phone (866) 771-1280, fax (360) 664-0689, or email harborfishtickets@dfw.wa.gov.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. May 8, 2008:

WAC 220-44-03100D Willapa Bay spring white sturgeon fishery.

WSR 08-10-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-87—Filed April 25, 2008, 9:10 a.m., effective April 25, 2008, 9:10 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000V and 220-52-04000W; and amending WAC 220-52-040.

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: Severe winter storms resulted in commercial crab gear being scattered from its original location. A provision to allow this gear to be recovered is a conservation measure that will reduce the accumulation of lost and derelict gear in the ocean. The emergency rule that was filed on April 23, 2008, as WSR 08-10-002, failed to make it clear that both the derelict-gear owners and the retrievers must sign an official department letter to take part in the derelict-gear recovery program. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: April 24, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-04000W Coastal crab fishery—Lawful and unlawful gear. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately through May 31, 2008, it is unlawful to remove, retrieve, or possess commercial crab gear belonging to another, except as provided in this section:

(a) Licensed Coastal Dungeness crab operators may retrieve and possess another's commercial crab gear under the following conditions: The license owner or designated alternate operator must first sign the 2008 Coastal Crab Gear Recovery Permission Letter indicating his or her intent to participate in the derelict-gear removal program. Owners of derelict commercial crab gear who want to allow license owners and designated alternate operators to retrieve the derelict gear also must sign the 2008 Coastal Crab Gear Recovery Permission Letter indicating this intent. The department will then compile an official list of all program participants. Licensed Dungeness crab operators must have aboard the vessel, when retrieving another's derelict commercial crab gear, a copy of this official list. Only commercial crab gear belonging to an individual whose name or buoy number is on the official list aboard the retrieving vessel can be retrieved.

(b) Licensed Coastal Dungeness crab operators may only retrieve and remove derelict commercial crab gear from the waters of the Pacific Ocean between the mouth of the Columbia River (46°15.00.N) and Point Chehalis, Washington (46°53.30.N).

(c) Licensed Coastal Dungeness crab operators who retrieve and remove derelict commercial crab gear must immediately record in their Washington Coastal Dungeness Crab logbook, by latitude and longitude, the location of each pot retrieved.

(d) Licensed Coastal Dungeness crab operators who retrieve and remove derelict commercial crab gear must attempt to contact the lawful owner and make arrangements to return the gear within six weeks of retrieving and removing the gear. If an operator cannot meet this deadline, or if no owner claims the gear or can be found, the operator must call department biologist Brandon Bryant at (360) 249-4628, extension 229, by the end of the seventh week after retrieving and removing the gear.

(2) Coastal commercial Dungeness license owners and designated alternate operators must return all original copies of the 2008 Coastal Crab Gear Recovery Permission Letter by May 1, 2008, to WDFW's Region 6 Office, 48 Devonshire Rd, Montesano, WA 98563.

REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-52-04000V Coastal crab fishery—Lawful and unlawful gear.

The following section of the Washington Administrative Code is repealed, effective 11:59 p.m. on June 1, 2008:

WAC 220-52-04000W Coastal crab fishery—Lawful and unlawful gear.

WSR 08-10-017
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
(Mental Health Division)

[Filed April 25, 2008, 10:08 a.m., effective April 25, 2008, 10:08 a.m.]

Effective Date of Rule: Immediately.

Purpose: The mental health division is codifying its policy on how it administers community mental health services in the event of a nonparticipating regional support network.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0105, 388-865-0410, 388-865-0484, 388-865-0511, and 388-865-0526.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, 71.34.380, and 74.08.090.

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

Reasons for this Finding: The Pierce County Regional Support Network (RSN) no longer administers medicaid and other department-funded mental health services as of January 1, 2008. This required the department to assume the duties of the RSN in order to continue to provide access for Pierce County consumers to mental health services. This rule-making action continues the emergency rule that is currently in effect under WSR 08-02-060 while the department completes the permanent rule-making process. The department is working with internal and external stakeholders on the organization of chapter 388-865 WAC and plans to formally propose the rules in the summer of 2008.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, 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 5, Repealed 0.

Date Adopted: April 15, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0105 What the mental health division does and how it is organized. (1) The department of social and health services is designated by the legislature as the state mental health authority, and has designated the mental health division to administer the state mental health program.

(2) Local services are administered by regional support networks or by the mental health division.

(3) Telephone numbers for the mental health division or regional support networks are located in the local telephone directory and can also be obtained by calling the mental health division at the telephone number in subsection (4) of this section.

(4) To request an organizational chart, contact the mental health division at 1-888-713-6010 or (360) 902-8070, or write to the Mental Health Division Director, P.O. Box 45320, Olympia, WA 98504.

~~((3) Local services are administered by regional support networks (RSN), whose telephone number is located in the local telephone directory and can also be obtained by calling the mental health division at the above telephone number.))~~

NEW SECTION

WAC 388-865-0106 When local services are administered by the mental health division. (1) The mental health division administers local services if:

(a) A regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045; or

(b) The DSHS secretary assumes the duties assigned to a nonparticipating regional support network under RCW 71.24.035(16).

(2) Within available resources as defined in RCW 71.24.025(2), consumers residing within the boundaries of a nonparticipating regional support network may receive services from any community support service provider that is contracted with the department under the provisions of chapter 388-502 WAC and licensed by or certified by the mental health division;

(3) When the DSHS secretary assumes the duties assigned to a nonparticipating regional support network, the following standards and services continue to apply:

(a) WAC 388-865-0217, psychiatric indigent inpatient program;

(b) WAC 388-865-0222, advisory board;

(c) WAC 388-865-0225, resource management;

- (d) WAC 388-865-0229, inpatient services;
- (e) WAC 388-865-0230, community support services;
- (f) WAC 388-865-0235, residential and housing services;
- (g) WAC 388-865-0240, consumer employment services;
- (h) WAC 388-865-0245, administration of ITA;
- (i) WAC 388-865-0250, ombuds services; and
- (j) WAC 388-865-0284, standards for contractors and subcontractors.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0410 Consumer rights. (1) The provider must document that consumers, prospective consumers, or legally responsible others are informed of consumer rights at admission to community support services in a manner that is understandable to the individual. Consumer rights must be written in alternative format for consumers who are blind or deaf, and must also be translated to the most commonly used languages in the service area consistent with WA 388-865-0260(3);

(2) The provider must post a written statement of consumer rights in public areas, with a copy available to consumers on request. Providers of telephone only services (e.g., crisis lines) must post the statement of consumer rights in a location visible to staff and volunteers during working hours;

(3) The provider must develop a statement of consumer rights that incorporates the following statement or a variation approved by the mental health division: "You have the right to:

- (a) Be treated with respect, dignity and privacy;
- (b) Develop a plan of care and services which meets your unique needs;
- (c) The services of a certified language or sign language interpreter and written materials and alternate format to accommodate disability consistent with Title VI of the Civil Rights Act;
- (d) Refuse any proposed treatment, consistent with the requirements in chapters 71.05 and 71.34 RCW;
- (e) Receive care which does not discriminate against you, and is sensitive to your gender, race, national origin, language, age, disability, and sexual orientation;
- (f) Be free of any sexual exploitation or harassment;
- (g) Review your clinical record and be given an opportunity to make amendments or corrections;
- (h) Receive an explanation of all medications prescribed, including expected effect and possible side effects;
- (i) Confidentiality, as described in chapters 70.02, 71.05, and 71.34 RCW and regulations;
- (j) All research concerning consumers whose cost of care is publicly funded must be done in accordance with all applicable laws, including DSHS rules on the protection of human research subjects as specified in chapter 388-04 WAC;
- (k) Make an advance directive, stating your choices and preferences regarding your physical and mental health treatment if you are unable to make informed decisions;

(l) Appeal any denial, termination, suspension, or reduction of services and to continue to receive services at least until your appeal is heard by a fair hearing judge;

(m) If you are Medicaid eligible, receive all services which are medically necessary to meet your care needs. In the event that there is a disagreement, you have the right to a second opinion from:

(i) A provider within the regional support network about what services are medically necessary; or

(ii) For consumers not enrolled in a prepaid health plan, a provider under contract with the mental health division.

(n) Lodge a complaint with the ombuds, regional support network, or provider if you believe your rights have been violated. If you lodge a complaint or grievance, you must be free of any act of retaliation. The ombuds may, at your request, assist you in filing a grievance. The ombuds' phone number is: _____."

(o) Ask for an administrative hearing if you believe that any rule in this chapter was incorrectly applied in your case.

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 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0484 Process to certify providers of involuntary services. In order to be certified to provide services to consumers on an involuntary basis, the provider must comply with the following process:

(1) Be licensed as a community support provider consistent with this section or licensed as a community hospital by the department of health;

(2) Complete and submit an application for certification to the regional support network or the mental health division if the DSHS secretary has assumed the duties assigned to the nonparticipating regional support network;

(3) The regional support network selects providers for certification and makes a request to the mental health division for certification;

(4) The mental health division conducts an on-site review to examine agency policies and procedures, personnel records, clinical records, financial documents, and any other information that may be necessary to confirm compliance with minimum standards of this section;

(5) The mental health division grants certification based on compliance with the minimum standards of this section and chapter 71.05 RCW;

(6) The certificate may be renewed annually ~~((at the request of))~~ if:

(a) Requested by the regional support network or those providers contracted with the mental health division directly; and

(b) The provider(~~'s continued compliance~~) continues to comply with the minimum standards of this section;

(7) The procedures to suspend or revoke a certificate are the same as outlined WAC 388-865-0468;

(8) The appeal process to contest a decision of the mental health decision is the same as outlined in WAC 388-865-0482.

AMENDATORY SECTION (Amending WSR 04-07-014, filed 3/4/04, effective 4/4/04)

WAC 388-865-0511 Evaluation and treatment facility certification. To obtain and maintain certification to provide inpatient evaluation and treatment services under chapter 71.05 and 71.34 RCW, a facility must meet the following requirements:

- (1) Be licensed by the department of health as:
 - (a) A hospital as defined in chapter 70.41 RCW;
 - (b) A psychiatric hospital as defined in chapter 246-322 WAC;
 - (c) A mental health inpatient evaluation and treatment facility consistent with chapter 246-337 WAC; or
 - (d) A mental health child long-term inpatient treatment facility consistent with chapter 246-337 WAC.
- (2) Be approved by the regional support network, or the mental health division (~~(in the case of mental health)~~). Child long-term inpatient treatment facilities(~~(-and)~~) can only be approved by the mental health division.
- (3) Successfully complete a provisional and annual on-site review by the mental health division to determine facility compliance with the minimum standards of this section and chapters 71.05 and 71.34 RCW.

AMENDATORY SECTION (Amending WSR 04-07-014, filed 3/4/04, effective 4/4/04)

WAC 388-865-0526 Single bed certification. At the discretion of the mental health division, an exception may be granted to allow treatment to an adult on a seventy-two hour detention or fourteen-day commitment in a facility that is not certified under WAC 388-865-0500; or for a maximum of thirty days to allow a community facility to provide treatment to an adult on a ninety- or one hundred eighty-day inpatient involuntary commitment order. For involuntarily detained or committed children, the exception may be granted to allow treatment in a facility not certified under WAC 388-865-0500 until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

- (1) The regional support network or its designee must submit a written request for a single bed certification to the mental health division prior to the commencement of the order. In the case of a child, the facility must submit the written request directly to the mental health division. If the DSHS secretary has assumed the duties assigned to a nonparticipating regional support network, a single bed certification may be requested by a mental health division designee contracted to provide inpatient authorization or designated crisis response services.
- (2) The facility receiving the single bed certification must meet all requirements of this section unless specifically waived by the mental health division.
- (3) The request for single bed certification must describe why the consumer meets at least one of the following criteria:
 - (a) The consumer requires services that are not available at a facility certified under this chapter or a state psychiatric hospital; or
 - (b) The consumer is expected to be ready for discharge from inpatient services within the next thirty days and being

at a community facility would facilitate continuity of care, consistent with the consumer's individual treatment needs.

(4) The mental health division director or the director's designee makes the decision and gives written notification to the requesting (~~(regional support network)~~) entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal law or state statute.

(5) The mental health division may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the mental health division determines that the violation places consumers in imminent jeopardy, immediate revocation of this exception can occur.

(6) Neither consumers nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding single bed certification decisions by mental health division staff.

WSR 08-10-018

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 25, 2008, 10:10 a.m., effective April 25, 2008, 10:10 a.m.]

Effective Date of Rule: Immediately.

Purpose: To remove barriers and increase accessibility for clients seeking children's and pregnancy medical assistance, per new state law RCW 74.09.470.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0085.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.470.

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: Adding this language to the rule reduces barriers and streamlines and reforms agency procedures mandated by the passage of SSB 5093. The emergency rule is necessary while the permanent rule-making process, initiated under WSR 08-01-020, is completed.

This continues the emergency rule that is currently in effect under WSR 08-02-059 while the department completes the permanent rule-making process. The department plans to file the permanent rule proposal (CR-102) in April 2008.

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

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

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

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

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

Date Adopted: April 10, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-08-045, filed 3/30/06, effective 5/1/06)

WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits? This section applies to cash assistance, Basic Food, and medical programs for children, pregnant women, and families. We decide how much of your self-employment income to count by:

For cash, Basic Food, and family medical programs:

(1) We ~~((decide how much of your self-employment income to count by:))~~ must count actual income in the month of application.

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;

(b) Subtracting your business expenses as described in subsection (2) below; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We subtract one hundred dollars as a business expense even if your costs are less than this. If you want us to subtract your actual costs of more than one hundred dollars, you must list and give us proof of your expenses for us to count them. We never allow the following expenses:

(a) Federal, state, and local income taxes;

(b) Money set aside for retirement purposes;

(c) Personal work-related expenses (such as travel to and from work);

(d) Net losses from previous periods;

(e) Depreciation; or

(f) Any amount that is more than the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount we estimate you will get for the coming year.

(4) For cash and medical assistance, if your self-employment expenses are more than your self-employment income, we do not use this "loss" to reduce income from other self-employment businesses or other sources of income to your assistance unit.

(5) For Basic Food, we use a "loss" from self-employment farming or fishing income to reduce other sources of income **only** if you meet the following three conditions:

(a) Someone in your assistance unit is a self-employed farmer or fisher;

(b) Your gross yearly income from farming or fishing is or is expected to be at least one thousand dollars; and

(c) Your allowable costs for farming or fishing are more than your income from farming or fishing.

For children's and pregnancy medical programs:

(6) If you have worked long enough at the business to file a federal tax return last year and it represents your current income, we figure your gross self-employment income by:

(a) Adding together your gross self-employment income from your return and any profit you make from selling your business property or equipment;

(b) Subtracting your allowable business expenses except as described in subsection (2) above; and

(c) Averaging the income over the period the income covers.

(7) If you have worked at your business for less than a year or if you did not file a federal tax return in the last year, we figure your gross self-employment income by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment over the period of time the business has been in operation within the last year;

(b) Subtracting your allowable business expenses except as described in subsection (2) above; and

(c) Averaging the income we estimate you will get for the coming year.

WSR 08-10-019

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 25, 2008, 10:13 a.m., effective April 25, 2008, 10:13 a.m.]

Effective Date of Rule: Immediately.

Purpose:

- DSHS is updating the 2008 federal maximum resource standard that increases January 1, 2008. This includes the formula and a link to the long-term care standards.
- DSHS is updating the 2008 federal maximum maintenance standard that increases January 1, 2008. This includes the formula and a link to the long-term care standards.
- Because both standards increase annually, the links to the updated standards will show the updated amounts starting in January 2009 and each year thereafter.
- DSHS is updating the personal needs allowance for clients in a medical institution that increases July 1, 2008, as directed by the Washington state 2008 supplemental operating budget (ESHB 2687).

Citation of Existing Rules Affected by this Order:
Amending WAC 388-513-1350 and 388-513-1380.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

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: Emergency rules are necessary to continue implementation of the federal maximum resource standard and the federal maximum maintenance standard that became effective January 1, 2008. A CR-101 was filed as WSR 07-22-063 on November 2, 2007. A CR-102 was filed as WSR 08-05-027, and a hearing was held on March 25, 2008. A supplemental CR-102 will be filed to include the PNA increase authorized by the Washington state 2008 supplemental operating budget (ESHB 2687).

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

Date Adopted: April 15, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-19-128, filed 9/19/07, effective 10/20/07)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community

spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle(~~s~~) not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an an SSI-related client, the department adds together the countable resources of both spouses if subsections (2), (5) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

(A) Are not subject to third-party payment or reimbursement;

(B) Have not been used to satisfy a previous spend down liability;

(C) Have not previously been used to reduce excess resources;

(D) Have not been used to reduce client responsibility toward cost of care;

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(F) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to nonexcluded income, the combined total is less than the:

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to

the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. ~~((The maximum allocation amount is ninety-nine thousand five hundred forty dollars effective January 1, 2006.))~~ Effective January 1, ~~((2007))~~ 2008, the maximum allocation is one hundred and ~~((one))~~ four thousand ~~((six))~~ four hundred ~~((and forty))~~ dollars. ~~((f))~~ This standard increases annually on January 1st based on the consumer price index. (For the current standard starting January 2008 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-five thousand one hundred four dollars effective July 1, 2007 (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2007 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the

month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsection (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 07-19-126, filed 9/19/07, effective 10/20/07)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving general assistance.

(iv) Effective July 1, 2007(–) through June 30, 2008 fifty-five dollars and forty-five cents for all other clients in a medical institution. Effective July 1, 2008 this PNA increases to fifty-seven dollars and twenty-eight cents.

(v) Current PNA and long-term care standards can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC ~~((388-503-0510(1)))~~ 388-475-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) in the following order:

(a) Income garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, ~~((2007))~~ 2008, two thousand ~~((five))~~ six hundred ~~((forty-one))~~ ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, <http://www.bls.gov/cpi/>). Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

Purpose: The department is adopting these rule amendments to comply with federal standards changes effective January 1, 2008, and April 1, 2007.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0070 and 388-478-0080.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

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: Federal standards are changing effective January 1, 2008, leaving the current rules out of compliance with federal requirements.

This continues the emergency rule that is currently in effect under WSR 08-02-058 while the department completes the permanent rule-making process. The department has filed the permanent rule proposal (CR-102) under WSR 08-06-075 and held a public hearing on April 8, 2008.

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

Date Adopted: April 10, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN). (~~((1) Beginning January 1, 2006, the medically needy income level (MNIL) is:~~

(a) One person	\$603
(b) Two persons	\$603
(c) Three persons	\$667
(d) Four persons	\$742
(e) Five persons	\$858
(f) Six persons	\$975
(g) Seven persons	\$1,125
(h) Eight persons	\$1,242
(i) Nine persons	\$1,358
(j) Ten persons and more	\$1,483))

WSR 08-10-020

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 25, 2008, 10:15 a.m., effective April 25, 2008, 10:15 a.m.]

Effective Date of Rule: Immediately.

Changes to the medically needy income level (MNIL) occur on January 1st of each calendar year. Current income standards can be found at http://www1.dshs.wa.gov/pdf/esa/manual/Standards_C_MedAsst_Chart.pdf.

(2) ~~((The MNIL))~~ Medically needy standards for ~~((a))~~ persons who ~~((meets))~~ meet institutional status requirements ~~((is))~~ are in WAC ~~((388-513-1305(3)))~~ 388-513-1395. The standard for a client who lives in an alternate living facility can be found in WAC 388-513-1305.

(3) Find the resource standards for institutional programs in WAC 388-513-1350. The institutional standard chart can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

~~((3))~~ (4) Countable resource standards for the MN program ~~((is))~~ are:

- (a) One person \$2,000
- (b) ~~((Two persons))~~ A legally married couple \$3,000
- (c) For each additional family member add \$50

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards. (1) The SSI payment standards, also known as the federal benefit rate (FBR), ~~((beginning))~~ change each January 1, ~~((-2006 are:~~

~~((a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)~~

- Individual \$603
- Individual with an ineligible spouse \$603
- Couple \$904

~~((b) Shared living (in the home of another)~~

- Individual \$402
- Individual with an ineligible spouse \$402
- Couple \$603

~~((c) Living in an institution~~

- Individual \$30))

(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) See WAC 388-513-1305 for standards of clients living in an alternate living facility.

(4) The SSI-related CNIL standards are the same as the SSI payment standards for single persons and couples. Those paying out shelter costs have a higher standard than people who have supplied shelter. ~~((:~~

- (a) Single person \$603
- (b) Married couple both eligible 904
- (c) Supplied shelter single person 402
- (d) Supplied shelter couple both eligible 603))

~~((4))~~ (5) The countable resource standards for SSI and SSI-related CN medical programs are:

- (a) One person \$2,000
- (b) A legally married couple \$3,000

WSR 08-10-021

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 25, 2008, 1:58 p.m., effective April 25, 2008, 1:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is revising sections within chapter 388-106 WAC to amend the in-home classifications to allow for the additional consideration of hours for clients with complex behavioral and cognitive issues and for clients with extremely high needs for assistance with activities of daily living.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0100, 388-106-0110, and 388-106-0125.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Chapter 522, Laws of 2007 (SHB 1128).

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 department must extend emergency rules filed as WSR 08-02-056 to meet requirements of the individual provider home care worker CBA, approved and funded by the Washington state legislature in the 2007-09 omnibus operating budget. DSHS long-term care budget notes state "effective September 1, 2007, certain hours of work for providers caring for clients with complex behavioral and cognitive issues will be increased." A CR-101 was filed as WSR 07-15-048 on July 13, 2007; a CR-102 was filed as WSR 08-02-027 on December 24, 2007; and a public hearing took place on February 5, 2008.

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

Date Adopted: April 21, 2009 [2008].

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0100 How does the CARE tool measure mood and behaviors? (1) When you do not meet the criteria for the clinically complex classification group, or the criteria for exceptional care, or for in-home only have a cognitive performance scale score of five or six, then the mood and behavior criteria listed in subsections (3) and (4) below determines your classification group. If you are eligible for more than one "B" group classification based on the two methodologies, CARE will place you in the highest group for which you qualify.

(2) For each behavior that the CARE tool has documented, the department will determine a status as "current" or "past" as defined in WAC 388-106-0010.

(3) CARE places you in the mood and behavior classification group only if you have one or more of the behavior/moods that also meets the listed status, frequency, and alterability as identified in the following chart (~~No other moods or behaviors documented by CARE will qualify you for the mood and behavior classification.~~):

Behavior/Mood	AND Status, Frequency & Alterability
Assaultive	Current
Combative during personal care	Current
Combative during personal care	In past and addressed with current interventions
Crying tearfulness	Current, frequency 4 or more days per week
Delusions	In past, addressed with current interventions
Depression score (≥ 14) of 14 or greater	N/A
Disrobes in public	Current and not easily altered
Easily irritable/agitated	Current and not easily altered
Eats nonedible substances	Current
Eats nonedible substances	In past, addressed with current interventions
Hallucinations	Current
Hiding items	In past, addressed with current interventions
Hoarding/collecting	In past, addressed with current interventions
Mental health therapy/program	Need

Behavior/Mood	AND Status, Frequency & Alterability
Repetitive complaints/questions	Current, daily
Repetitive complaints/questions	In past, addressed with current interventions
Repetitive movement/pacing	Current, daily
Resistive to care	Current
Resistive to care	In past, addressed with current interventions
Sexual acting out	Current
Sexual acting out	In past, addressed with current interventions
Spitting	Current and not easily altered
Spitting	In past, addressed with current interventions
Breaks/throws items	Current
Unsafe smoking	Current and not easily altered
Up at night and requires intervention	Current
Wanders exit seeking	Current
Wanders exit seeking	In past, addressed with current interventions
Wanders not exit seeking	Current
Wanders not exit seeking	In past, addressed with current interventions
Yelling/screaming	Current, frequency 4 or more days per week

((Key:
> means greater than.
≥ means greater than or equal to.))

or

(4) CARE places you in the mood and behavior classification group if you have a behavior point score greater than 1, your CPS score (as defined in WAC 388-106-0090) is greater than 2, and your ADL score (as defined in WAC 388-106-0105) is greater than 1.

Status	Intervention	Frequency	Weight
Past	No Intervention	N/A	0
Past	With Intervention	N/A	0.25
Current	N/A	1-3 days/wk	0.5
Current	N/A	4-6 days/wk	0.75
Current	N/A	Daily	1

Each current behavior (as shown in the table below) has a value from .5 to 6 depending on the severity and alterability. Each status combination (shown in the table above) has a weight from 0 to 1. Behavior points are determined by multiplying the value of each current behavior (from the list

below) by the weight of the status combination (above). Behavior points for past behaviors will be determined by multiplying the easily altered value of the behavior from the table below by the appropriate weight from the table above (0 or .25).

The list of behaviors below is divided into categories. Each category has a point limit of how many points can be counted toward the total behavior point score as detailed below. The total behavior point score is determined by totaling the weight-adjusted values for each category below.

<u>Behavior</u>	<u>Value</u>	
	<u>Easily Altered/Past</u>	<u>Not Easily Altered</u>
<u>1. Crying and Tearfulness</u>	<u>.5</u>	<u>1</u>
<u>2. Easily Irritable/Agitated</u>	<u>.5</u>	<u>1</u>
<u>3. Obsessive about health or body functions</u>	<u>.5</u>	<u>1</u>
<u>4. Repetitive Physical Movement</u>	<u>.5</u>	<u>1</u>
<u>5. Hiding Items</u>	<u>.5</u>	<u>1</u>
<u>6. Hoarding/Collecting</u>	<u>.5</u>	<u>1</u>
<u>7. Inappropriate Verbal Noise</u>	<u>.5</u>	<u>1</u>
<u>8. Wanders, not exit seeking</u>	<u>.5</u>	<u>1</u>
<u>Maximum total points after adjusting for status for behaviors 1-8=</u> <u>2</u>		
<u>9. Repetitive anxious complaints/questions</u>	<u>1</u>	<u>2</u>
<u>10. Rummaging through or takes others belongings</u>	<u>1</u>	<u>2</u>
<u>11. Verbally Abusive</u>	<u>1</u>	<u>2</u>
<u>12. Yelling/Screaming</u>	<u>1</u>	<u>2</u>
<u>13. Spitting</u>	<u>1</u>	<u>2</u>
<u>14. Unrealistic Fears</u>	<u>1</u>	<u>2</u>
<u>15. Accuses others of stealing</u>	<u>1</u>	<u>2</u>
<u>Maximum total points after adjusting for status for behaviors 9-15=</u> <u>3</u>		
<u>16. Resistive to care with words/gestures</u>	<u>2</u>	<u>3</u>
<u>17. Up at night, requires intervention</u>	<u>2</u>	<u>3</u>
<u>18. Unsafe cooking</u>	<u>2</u>	<u>3</u>

<u>Behavior</u>	<u>Value</u>	
	<u>Easily Altered/Past</u>	<u>Not Easily Altered</u>
<u>19. Inappropriate toileting/menses activity</u>	<u>2</u>	<u>3</u>
<u>20. Unsafe smoking</u>	<u>2</u>	<u>3</u>
<u>21. Left home and became lost</u>	<u>2</u>	<u>3</u>
<u>22. Disrobes in public</u>	<u>2</u>	<u>3</u>
<u>Maximum total points after adjusting for status for behaviors 16-22=</u> <u>4</u>		
<u>23. Injures self</u>	<u>4</u>	<u>5</u>
<u>24. Wanders/Exit seeking</u>	<u>4</u>	<u>5</u>
<u>25. Sexual acting out</u>	<u>4</u>	<u>5</u>
<u>26. Intimidating</u>	<u>4</u>	<u>5</u>
<u>27. Assaultive</u>	<u>4</u>	<u>5</u>
<u>28. Breaks, throws items</u>	<u>4</u>	<u>5</u>
<u>Maximum total points after adjusting for status for behaviors 23-28=</u> <u>10</u>		
<u>29. Fire setting</u>	<u>5</u>	<u>6</u>
<u>30. Combative during care</u>	<u>5</u>	<u>6</u>
<u>31. Pica</u>	<u>5</u>	<u>6</u>
<u>32. Seeks vulnerable partners</u>	<u>5</u>	<u>6</u>
<u>Maximum total points after adjusting for status for behaviors 29-32=</u> <u>12</u>		

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0110 How does the CARE tool evaluate me for the exceptional care classification of in-home care? CARE places you in the exceptional care classifications for the in-home setting when the following criteria are met in either diagram 1 or 2:

Diagram 1
((You have one of the following diagnoses: <ul style="list-style-type: none"> ■ Quadriplegia; ■ Paraplegia; ■ ALS (Amyotrophic Lateral Sclerosis); ■ Parkinson's Disease; ■ Multiple Sclerosis; ■ Comatose;

<ul style="list-style-type: none"> ■ Muscular Dystrophy; ■ Cerebral Palsy; ■ Post Polio Syndrome; or ■ TBI (traumatic brain injury);
((AND))
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You require at least one of the following:
<ul style="list-style-type: none"> ■ External catheter; ■ Intermittent catheter; ■ Indwelling catheter care; ■ Bowel program; ((or)) ■ Ostomy care; or ■ <u>Total in Self Performance for Toilet Use.</u>
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care:
<ul style="list-style-type: none"> ■ Active range of motion (AROM); or ■ Passive range of motion (PROM).

Diagram 2
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care:
<ul style="list-style-type: none"> ■ Active range of motion (AROM); or ■ Passive range of motion (PROM).
AND
All of the following apply:
<ul style="list-style-type: none"> ■ You require IV nutrition support or tube feeding; ■ Your total calories received per IV or tube was greater than 50%; and ■ Your fluid intake <u>by IV or tube</u> is greater than 2 cups per day.
AND
You need assistance with one of the following, provided by an individual provider, agency provider, a private duty nurse, or through self-directed care:
<ul style="list-style-type: none"> ■ Dialysis; or ■ Ventilator/respirator.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0125 How does CARE use ~~((the))~~ criteria ~~((of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined~~

~~under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, ADLs as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110;))~~ to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following ~~((fourteen))~~ seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with 420 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with 350 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with 280 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with 240 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with 190 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with 145 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with 200 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with 180 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with 140 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with 95 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with 90 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with 52 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with 110 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with 90 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with 52 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with 78 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with 62 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with 29 base hours if you have an ADL score of 0-4.

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group E)) ((Exceptional care = yes and Mood and behavior = yes or no and Cognitive performance score = 0-6))	((ADL Score 26-28))	((E High (14))	((420))
	((ADL Score 22-25))	((E Med (13))	((350))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group D)) ((Cognitive performance score = 4-6 and Clinically complex = yes and Mood and behavior = yes or no)) ((OR)) ((Cognitive performance score = 5-6 and Clinically complex = no and Mood and behavior = yes or no))	((ADL Score 18-28))	((D High (12))	((240))
	((ADL Score 13-17))	((D Med (11))	((190))
	((ADL Score 2-12))	((D Low (10))	((145))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group C)) ((Cognitive performance score = 0-3 and Clinically complex = yes and Mood and behavior = yes or no))	((ADL Score 18-28))	((C High (9))	((180))
	((ADL Score 9-17))	((C Med (8))	((140))
	((ADL Score 2-8))	((C Low (7))	((83))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group B)) ((Mood and behavior = yes and Clinically complex = no and Cognitive performance score = 0-4))	((ADL Score 15-28))	((B High (6))	((155))
	((ADL Score 5-14))	((B Med (5))	((90))
	((ADL Score 0-4))	((B Low (4))	((52))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group A)) ((Mood and behavior = no and Clinically complex = no and Cognitive performance score = 0-4))	((ADL Score 10-28))	((A High (3))	((78))
	((ADL Score 5-9))	((A Med (2))	((62))
	((ADL Score 0-4))	((A Low (1))	((29))

WSR 08-10-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-86—Filed April 28, 2008, 1:57 p.m., effective April 28, 2008,
7:00 p.m.]

Effective Date of Rule: April 28, 2008, 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 220-33-01000F and 220-33-01000G; 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 commercial fishing periods in the Tongue Point/South Channel select area. Given a high predicted upriver run forecast, low cumulative impacts to date in SAFE commercial fisheries, and favorable test fishing results, staff believe this is an opportune time to initiate a full-fleet spring fishery at Tongue Point to help evaluate the feasibility of reestablishing production-level releases of spring chinook at this site. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the 2005-2007 interim management agreement. Season is consistent with Washington fish and wildlife commission guidance for 2006-2008 sturgeon fishery management. This rule is consistent with actions of the Columbia River compact hearings of February 15 and April 24, 2008. This rule 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: April 28, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-01000G 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. **Blind Slough Select Area**

a) Area: Blind Slough and Knappa Slough areas. From May 1 through June 13, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary). Concurrent Washington/Oregon waters extend downstream of the railroad bridge.

b) Dates: 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 13, 2008

c) Gear: 8-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

d) Allowable sales: salmon, white sturgeon, and shad.

2. Deep River Select Area

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

b) Dates: 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 13, 2008.

c) Gear: 8-inch maximum. Nets are restricted to a maximum length of 100 fathoms with 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 sales: salmon, white sturgeon, and shad.

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.

3. Tongue Point/South Channel Select Area

a) Area: Reduced Tongue Point and South Channel areas open entire season. The reduced Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays from April 28 through June 13, 2008

c) Gear: In the reduced Tongue Point fishing area, gear restricted to 8-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 8-inch maximum mesh size, maximum net length of 100 fathoms, and no weight restriction on leadline.

d) Additional gear regulations: Multiple Net Rule: It will be legal to have onboard a commercial vessel more than one net provided the nets are of mesh size legal 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.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered

by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater

e) Allowable sales: salmon, white sturgeon, and shad.

f) Miscellaneous Regulations: During April 28 through May 9, transportation or possession of fish outside the fishing area is unlawful until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock during the first four fishing periods (April 28-May 9). After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 12, fishers are required to call 503-325-3418 and leave a message including name, catch, and where and when the fish will be sold

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. April 28, 2008:

WAC 220-33-01000F Columbia River seasons below Bonneville. (08-64)

The following section of the Washington Administrative Code is repealed effective June 14, 2008:

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

WSR 08-10-031 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-85—Filed April 28, 2008, 3:56 p.m., effective May 1, 2008, 12:01 a.m.]

Effective Date of Rule: May 1, 2008, 12:01 a.m.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500B; 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 the Pacific Fisheries Management Council. There is sufficient recreational quota to provide for these seasons. 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: April 28, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-25500C 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 - Open May 1 until further notice, seven days a week.

(b) Catch Record Card Area 2 - Open May 1 until further notice, except after May 1, 2008, open to fishing 12:01 a.m. through 11:59 p.m. on Sundays and Tuesdays only.

(c) Catch Record Area 2 - Those waters from 47°25.00'N. latitude (Queets River) south to 46°58.00'N latitude and east of 124°30.00'W longitude, open May 1 until further notice, 12:01 a.m. through 11:59 p.m., Fridays through Sundays and Tuesdays only.

(d) Catch Record Card Areas 3 and 4 - Open May 13, 2008, until further notice, 12:01 a.m. through 11:59 p.m. on Tuesdays, Thursdays, and Saturdays. 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.

(e) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Open through June 13, 2008, 12:01 a.m. through 11:59 p.m., Thursdays through Mondays only.

(f) Catch Record Card Area 5 - Open May 22 through July 21, 2008, 12:01 a.m. through 11:59 p.m., Thursdays through Mondays only.

(g) 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500B Halibut—Seasons—Daily and possession limits. (08-62)

**WSR 08-10-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-89—Filed April 28, 2008, 3:58 p.m., effective April 28, 2008, 3:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-325.

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. The Discovery Bay shrimp district closure is necessary, as insufficient shrimp are available to conduct a fishery. The closure of Marine Area 11 at the end of the day on May 3, 2008, is necessary because the recreational harvest share of spot shrimp will have been harvested by that time. 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: April 28, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-32500Y Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of the Discovery Bay Shrimp District.

2) Effective 3:00 p.m., May 3, 2008 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 11.

WSR 08-10-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-90—Filed April 29, 2008, 3:00 p.m., effective May 3, 2008,
12:01 a.m.]

Effective Date of Rule: May 3, 2008, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2, and 3. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: April 29, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

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

1. Effective 12:01 a.m. May 3 through 11:59 a.m. May 7, 2008, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. May 4 through 11:59 a.m. May 5, 2008, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 7, 2008:

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

WSR 08-10-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-88—Filed April 29, 2008, 3:02 p.m., effective May 1, 2008]

Effective Date of Rule: May 1, 2008.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-04600T; and amending WAC 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: Per the 2007-2008 Quileute resource management plan we will open the Quileute special management area (SMA) to nontreaty fishers for one hundred pots per fisher shoreward of the 30-fathom curve from Cape Johnson to Destruction Island. 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: April 29, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-04600V Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) From the Washington/Oregon border to the U.S./Canada border, including Grays Harbor, Willapa Bay and the Columbia River, open with the following exceptions:

(a) The Quinalt Primary Special Management Area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

Northeast Corner (Raft River):	47°28.00 N. Lat.	124°20.70 W. Lon.
Northwest Corner:	47°28.00 N. Lat.	124°34.00 W. Lon.
Southwest Corner:	47°08.00 N. Lat.	124°24.75 W. Lon.
Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(2) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. May 1, 2008, until further notice.

(a) It is unlawful for a vessel to use more than 100 pots in any area open to the state fishery, shoreward of the 30-fathom curve from Cape Johnson to Destruction Island from May 1, 2008, until further notice. Fishers must pre-register with the Department of Fish and Wildlife, 24-hours prior to deploying gear in this area, by one of the three following methods:

- Fax transmission to Brandon Bryant at 360.664.0689;
- Email to Brandon Bryant at bryanblb@dfw.wa.gov; or
- Telephone call to Brandon Bryant at 360.249.4628, ext. 229

(b) The Quileute SMA is described as the area from Cape Johnson to Destruction Island shoreward of a line approximating 30 fathoms according to the following points.

- Northeast Corner; Cape Johnson, 47°58.00 - 124°40.40

- Northwest Corner; 47°58.00 - 124°49.00
- Southwest Corner; 47°40.50 - 124°40.00
- Southeast Corner; Destruction Island, 47°40.50 - 124°24.43

(3) All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600T Coastal crab seasons. (08-39)

WSR 08-10-040

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 30, 2008, 1:51 p.m., effective May 1, 2008]

Effective Date of Rule: May 1, 2008.

Purpose: The department is amending via an emergency rule WAC 388-450-0015 and 388-470-0045 to exclude economic stimulus payments, authorized by HR 5140, as income in the month of receipt and to exclude the payments as a resource for an additional two months. This change is necessary in order to apply the federal policy to general assistance programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015 and 388-470-0045.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: HR 5140.

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 rule change is necessary to allow the department to apply the federal policy regarding the economic stimulus rebates equally to all programs. Federal economic stimulus payments will be sent out beginning in May 2008. The department filed a CR-101 on April 21, 2008, as WSR 08-09-112.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: April 30, 2008.

Katherine D. Vasquez, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

WAC 388-450-0015 What types of income does the department not use to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments authorized under legislative action of the House of Representatives bill H.R. 5140;

~~((d))~~ (d) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

~~((e))~~ (e) Energy assistance payments;

~~((f))~~ (f) Educational assistance we do not count under WAC 388-450-0035;

~~((g))~~ (g) Native American benefits and payments we do not count under WAC 388-450-0040;

~~((h))~~ (h) Income from employment and training programs we do not count under WAC 388-450-0045;

~~((i))~~ (i) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

~~((j))~~ (j) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

~~((k))~~ (k) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

~~((l))~~ (l) Payments we are directly told to exclude as income under state or federal law.

~~((m))~~ (m) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

~~((n))~~ (n) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs? (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts; or

(vii) Lump sum payments as described in chapter 388-455 WAC.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

(b) Basic Food benefits;

(c) Income tax refunds in the month of receipt;

(d) Earned income tax credit (EITC) in the month received and the following month;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments authorized under legislative action of the House of Representatives bill H.R. 5140 in the month received and the following two months;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

~~((h))~~ (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

~~((h))~~ (i) Underpayments received under chapter 388-410 WAC;

~~((i))~~ (j) Educational benefits that are excluded as income under WAC 388-450-0035;

~~((j))~~ (k) The income and resources of an SSI recipient;

~~((k))~~ (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

~~((l))~~ (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

~~((m))~~ (n) Adoption support payments;

~~((n))~~ (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((o))~~ (p) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

WSR 08-10-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-91—Filed April 30, 2008, 3:55 p.m., effective May 1, 2008]

Effective Date of Rule: May 1, 2008.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M; and amending WAC 220-56-105, 220-56-116, 220-56-124, 232-28-619, 232-28-620, and 232-28-621.

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 is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 0, Repealed 1.

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

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

Date Adopted: April 30, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-10500D River mouth definitions—2008 North of Falcon. Notwithstanding the provisions of WAC 220-56-105, effective May 1, 2008, until further notice, provided that unless otherwise amended, all permanent rules remain in effect: The following river mouth is hereby otherwise defined: McLane Creek - a line 100 feet upstream of and parallel to the south bridge on Highway 101.

NEW SECTION

WAC 220-56-11600F Statewide saltwater hook rules—2008 North of Falcon. Notwithstanding the provisions of WAC 220-56-116, effective May 1, 2008, until further notice, it is unlawful to use other than single-point barbless hooks to fish for salmon in Marine Areas 1-13, except in the Ocean Shores and Westport Boat Basins, and in Marine Area 2-1 from August 1 until further notice, as provided for in this section.

NEW SECTION

WAC 220-56-12400H Unlawful provisions—Hoodspport Hatchery. Notwithstanding the provisions of WAC 220-56-124, effective July 1, 2008, until further notice, those waters of Catch Record Card Area 12 within a 2,000 foot arc seaward of yellow buoys at the mouth of Finch Creek at the Hoodspport Salmon Hatchery are regulated as provided for in this section:

(1) These waters are open to salmon angling regardless of the status of the surrounding waters of Area 12.

(2) Special daily limit of four salmon, of which no more than two salmon may be chinook salmon greater than 24 inches in length and no more than two may be coho salmon. Release chum salmon.

(3) It is unlawful to fish for or possess salmon taken from these waters from one hour after sunset to one hour before sunrise.

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—2008 North of Falcon. Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2008, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Baker River (Skagit County):** Mouth to Highway 20 Bridge: Salmon: Open June 14 through July 31, except closed 12:01 a.m. June 30 through 2:00 p.m. July 2, and 12:01 a.m. July 9 through 2:00 p.m. July 11. Non-buoyant lure restriction and night closure in effect. Daily limit 2 sockeye salmon.

From Highway 20 Bridge upstream 250' to boundary markers: Gamefish: Closed. Salmon: Open June 14 through July 31. Non-buoyant lure restriction and night closure in effect. Daily limit 2 sockeye salmon.

(2) **Cascade River (Skagit County):** From the mouth to the Rockport-Cascade Road Bridge: Salmon: Open June 1 through July 15. Non-buoyant lure restriction and night closure in effect. Daily limit 4 salmon, no more than 2 adults. Release all salmon except hatchery Chinook.

(3) **Columbia River,** From Priest Rapids Dam to Chief Joseph Dam, including up to base of Washburn Pond outlet structure: Salmon: From Priest Rapids Dam to Wells Dam: Open July 1 until further notice. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho and sockeye. From Wells Dam to Chief Joseph Dam: Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho and sockeye. July 1 through July 15: open only from

Highway 173 Bridge at Brewster to Highway 17 Bridge at Bridgeport. July 16 until further notice: open only from Wells Dam to Highway 17 Bridge at Bridgeport.

(4) **Hoh River (Jefferson County),** Outside of Olympic National Park: May 16 until further notice season. May 16 through May 31, open Wednesday through Sunday downstream from Willoughby Creek only. Willoughby Creek upstream to park boundary closed through May 31. Selective gear rules June 1 until further notice from Willoughby Creek to Morgan's Crossing Boat Launch, and June 1 until further notice from Morgan's Crossing Boat Launch to the mouth of south fork. Trout: Minimum length fourteen inches. Catch and release during May, except up to two hatchery steelhead may be retained on open days. Salmon: From Olympic National Park boundary to Willoughby Creek: Open May 16 until further notice. Open Wednesday through Sunday only of each week, daily limit 6 fish of which only 1 may be an adult, release wild Chinook.

(5) **Naselle River (Pacific/Wahkiakum counties),** From Highway 101 Bridge to Highway 4 Bridge: Salmon: Open August 1 until further notice. Daily limit 6 fish of which no more than 3 may be adult salmon and of these 3 adult fish no more than 2 may be adult Chinook. Release wild coho.

(6) **Nemah River, Middle Fork and South Fork (Pacific County):** Salmon: Open August 1 until further notice on Middle Nemah from mouth to DNR Bridge and South Nemah from mouth to confluence with Middle Nemah. Middle and South Nemah: Daily limit 6 fish of which no more than 2 may be adult salmon and of the two adult fish no more than one may be a wild adult coho.

(7) **Nooksack River (Whatcom County), from mouth to forks, Middle Fork to Dam and North Fork to Maple Creek:** Nonbuoyant lure restriction and night closure in effect June 1 until further notice.

(8) **Nooksack River, South Fork (Skagit/Whatcom counties):** From mouth to Skookum Creek: Night closure in effect June 1 until further notice.

(9) **Puyallup River (Pierce County):** From mouth to the Electron power plant outlet: Salmon: Open August 16 until further notice from mouth to Carbon River. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild adult Chinook.

(10) **Skagit River (Skagit/Whatcom counties):**

(a) From the Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport: Salmon open June 14 through July 31, except closed 12:01 a.m. June 30 until 2:00 p.m. July 2, and 12:01 a.m. July 9 until 2:00 p.m. July 11, and closed from 200 feet above the mouth of the Baker River to the Highway 530 Bridge at Rockport. Daily limit two sockeye salmon. Release all salmon except sockeye salmon.

(b) From the Highway 530 Bridge at Rockport to the Cascade River - Salmon open June 1 through July 15. Non-buoyant lure restriction and night closure in effect. Daily limit four salmon, no more than 2 adults. Release all salmon except hatchery Chinook.

(11) **Willapa River (Pacific County):** Salmon: Open August 1 until further notice from mouth to Highway 6 Bridge approximately 2 miles below mouth of Trap Creek. Daily limit 6 fish of which no more than 3 may be adult

salmon and of the adult salmon not more than one may be a wild adult coho and not more than two may be adult Chinook.

NEW SECTION

WAC 232-28-62000N Coastal salmon seasons—2008 North of Falcon. Notwithstanding the provisions of WAC 232-28-620, effective May 1, 2008, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 1:

(a) Open June 1 - June 28, daily limit 1 salmon, release all salmon except Chinook.

(b) Open June 29 until further notice: open Sunday through Thursday of each week, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

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

(a) Area 2:

(i) Open June 1 - June 28: open Sunday through Thursday of each week, daily limit 1 salmon, release all salmon except Chinook

(ii) Open June 29 until further notice: open Sunday through Thursday of each week, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

(b) Area 2-1:

(i) Open July 1 through July 31: open Sunday through Thursday of each week, daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

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

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

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

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

(3) Area 3:

(a) Open June 1 - June 28: open Tuesdays through Saturday of each week, daily limit 1 salmon, release all salmon except Chinook.

(b) Open July 1 until further notice: open Tuesday through Saturday of each week, daily limit 2 salmon, not more than one of which may be a Chinook, except release wild coho.

(4) Area 4:

(a) Open June 1 - June 28: open Tuesdays through Saturday of each week, daily limit 1 salmon, release all salmon except Chinook. Closed to salmon angling east of a true north/south line through Sail Rock.

(b) Open July 1 until further notice, with the following area rules, limits, and species restrictions: open Tuesday through Saturday of each week, daily limit 2 salmon, not more than one of which may be a Chinook, except release wild coho.

(i) Effective July 1 through July 31, closed to salmon angling east of a true north/south line through Sail Rock.

(ii) Effective beginning August 1, release Chinook east of the Bonilla-Tatoosh Line.

(iii) Effective beginning August 1, release chum.

NEW SECTION

WAC 232-28-62100C Puget Sound salmon seasons—2008 North of Falcon. Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective May 1, 2008 until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 5:

(a) Open July 1 - August 9, daily limit 2 salmon, except release chum, wild Chinook, and wild coho.

(b) Open August 10 until further notice, daily limit 2 salmon, except release chum, Chinook, and wild coho.

(2) Area 6:

(a) Open July 1 - August 9, daily limit 2 salmon, except release chum and wild coho; release wild Chinook west of a true north-south line through Buoy #2 immediately east of Ediz Hook; and release all Chinook east of a true north-south line through Buoy #2 immediately east of Ediz Hook.

(b) Open August 10 until further notice, daily limit 2 salmon, except release chum, Chinook, and wild coho.

(3) Area 7:

(a) Waters of Bellingham Bay described in WAC ~~220-56-195~~(1) closed July 1 through August 15. Open August 16 until further notice - Daily limit 4 salmon, not more than 2 of which may be Chinook salmon.

(b) All other waters of Area 7 - Open July 1 until further notice, daily limit 2 salmon, not more than one of which may be a Chinook salmon; and effective beginning August 1, release chum and wild coho.

(4) Area 8-1 - Open August 1 until further notice, daily limit 2 salmon, except release Chinook.

(5) Area 8-2:

(a) Effective June 15 until further notice - Waters adjacent to Tulalip Bay west of the line from Mission Point to Hermosa Point, and within 2,000 feet of shore, north of pilings at old Bower's Resort and south of the fishing marker 1.4 miles northwest of Hermosa Point, open Friday through 11:59 a.m. the following Monday of each week. Daily limit 2 salmon.

(b) Effective August 1 until further notice - All other waters of Area 8-2 open. Daily limit 2 salmon, except release Chinook.

(6) Area 9:

(a) Salmon fishing open year-round from the Edmonds fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook, and effective beginning August 1, release chum.

(b) Effective July 16 until further notice - All other waters of Area 9 open with the following area rules, limits, and species restrictions:

(i) July 16 through August 15, daily limit 2 salmon, except release chum, wild coho, and wild Chinook. Closed south of a line from Foulweather Bluff to Olele Point.

(ii) August 16 until further notice, daily limit 2 salmon, except release Chinook, chum and wild coho.

(7) Area 10:

(a) Salmon fishing open year-round from the Elliott Bay public fishing pier, Seacrest pier, Waterman pier, Bremerton boardwalk, and Illahee State Park pier. Daily limit 2 salmon, not more than one of which may be a Chinook, and effective beginning August 1, release chum.

(b) Effective June 1 through June 30, closed; except open north of a line from Meadow Point to Point Monroe, and release all salmon.

(c) Effective July 1 until further notice, all other waters of Area 10 open with the following area rules, limits, and species restrictions:

(i) July 1 through July 15, daily limit 2 salmon, except release Chinook.

(ii) July 16 through August 15, daily limit 2 salmon, except release wild Chinook; and effective August 1, release chum.

(iii) August 16 until further notice, daily limit 2 salmon, except release Chinook and chum.

(iv) Shilshole Bay east of a line from Meadow Point to West Point is closed.

(v) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge, south of a line projected true west from Battle Point and west of a line projected true south from Point White: daily limit 2 salmon, lawful to retain any Chinook; and effective August 1, release chum.

(vi) During the period July 1 through August 26, Elliott Bay east of a line from West Point to Alki Point is closed; except July 4 through August 25 - Open east of a line from Pier 91 to Duwamish Head, Friday through Monday of each week - Daily limit of 2 salmon, lawful to retain any Chinook, and release chum August 1 through August 25.

(vii) Effective July 1 until further notice, Duwamish waterway downstream from the First Avenue South Bridge to an east-west line through Southwest Hanford Street on Harbor Island parallel to Southwest Spokane Street where it crosses Harbor Island: Night closure, only 1 single-point barbless hook may be used, and only fish hooked inside the mouth may be retained.

(8) Area 11:

(a) Salmon fishing open year-round from the Les Davis public fishing pier, Des Moines public fishing pier, Redondo public fishing pier, Dash Point dock, and Point Defiance Boathouse dock. Daily limit 2 salmon, not more than one of which may be a Chinook.

(b) Effective June 1 until further notice - All other waters of Area 11 open. Daily limit 2 salmon, except release wild Chinook.

(c) Those waters east of a line projected from the Sperry Ocean Dock to landfall below the Cliff House Restaurant on the north shore of Commencement Bay are closed June 1 through July 31.

(9) Area 12:

(a) July 1 until further notice in waters south of Ayock Point - Daily limit 4 salmon, of which no more than 2 may be

Chinook salmon and no more than 2 may be coho. Release chum.

(b) August 16 until further notice in waters of Quilcene Bay north of a true east line from Whitney Point to the Toandos Peninsula - Daily limit 2 coho salmon. Release all salmon except coho.

(c) July 1 until further notice, the Hoodspout Hatchery Zone is managed separately from the remainder of Area 12 described in WAC 220-56-124.

(10) Area 13:

(a) Salmon fishing open year-round from the Fox Island public fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook; and effective July 1, release wild coho.

(b) All other waters of Area 13, open May 1 until further notice, with the following area rules, limits and species restrictions:

(i) May 1 through June 30 - Daily limit 2 salmon, except release wild Chinook.

(ii) July 1 until further notice - Daily limit 2 salmon, except release wild coho and wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2008:

WAC 232-28-61900M	Exceptions to statewide rules—Hoh River (Jefferson Co.)
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**WSR 08-10-055
EMERGENCY RULES
SECRETARY OF STATE
(Elections Division)**

[Filed May 2, 2008, 12:20 p.m., effective May 2, 2008, 12:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to implement Initiative 872 for the 2008 primary and general elections.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-220-010, 434-220-020, 434-220-030, 434-220-040, 434-220-050, 434-220-060, 434-220-070, 434-220-080, 434-220-090, 434-230-020, 434-230-040, 434-230-050, 434-230-080, 434-230-150, 434-230-160, 434-230-170, 434-230-190, 434-230-200, 434-230-210 and 434-230-220; and amending WAC 434-208-060, 434-215-025, 434-230-010, 434-230-060, 434-250-040, 434-250-050, 434-250-310, 434-253-020, 434-253-025, 434-262-031, 434-262-160, 434-335-040, 434-335-445, and 434-381-120.

Statutory Authority for Adoption: RCW 29A.04.611.

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: On March 18, 2008, the United States Supreme Court issued *Washington State*

Grange v. Washington State Republican Party, et al. 552 U.S. _____, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008). In this opinion, the court reversed a Ninth Circuit opinion that had declared Washington's top two primary system unconstitutional. The impact of this ruling is that the primary system enacted by Initiative 872 (chapter 2, Laws of 2005) is now in effect. This change in primary election systems necessitates changes in the administrative rules relating to filing for office, the format of ballots and ballot materials, information submitted for appearance in the state voters' pamphlet, and the administration of primary and general elections. Pursuant to RCW 29A.24.081, the secretary of state's office and county auditors may begin to accept declarations of candidacy beginning May 16, 2008. The regular candidate filing period ends June 6, 2008. Ballots will be formatted and sent to print in June. There is insufficient time to adopt these rules through the standard rule-making process. The secretary of state's office did send a draft of the proposed rules to stakeholders and interested parties on April 16, 2008, posted the draft rules on the agency's web site, and accepted public comment through April 22, 2008.

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 19, Amended 14, Repealed 20.

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: May 2, 2008.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-208-060 Electronic filings. In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(1) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(2) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

(3) Lists of presidential electors selected by political parties or independent candidates;

(4) Voted ballots, provided the voter agrees to waive the secrecy of his or her ballot;

(5) Resolutions from cities, towns, and other districts calling for a special election;

(6) ~~((Filing of vacancies on the ticket by a major political party;~~

~~(7)))~~ Voter registration form.

NEW SECTION

WAC 434-208-110 Applicable dates and deadlines. If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

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

WAC 434-215-025 ~~((Declaration of candidacy—))~~Filing fee petitions. (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) The filing fee petition described in RCW 29A.24.-101(3) does not apply. The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."

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

NEW SECTION

WAC 434-215-120 Political party preference by candidate for partisan office. (1) On a declaration of candidacy, a candidate for partisan congressional, state, or county office may state his or her preference for a political party, or not state a preference. The candidate may use up to sixteen characters for the name of the political party. A candidate's party preference, or the fact that the candidate states no preference, must be printed with the candidate's name on the ballot and in any voters' pamphlets printed by the office of the secretary of state or a county auditor's office.

(2) If a candidate does not indicate a party that he or she prefers, then the candidate has stated no party preference and is listed as such on the ballot and in any voters' pamphlets.

(3) The filing officer may not print on the ballots, in a voters' pamphlet, or other election materials a political party name that is obscene. If the name of the political party provided by the candidate would be considered obscene, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited to remove the obscenity, or rejected and replaced with "states no party preference."

(4) A candidate's preference may not imply that the candidate is nominated or endorsed by the party, or that the party

approves of or associates with that candidate. If the name of the political party provided by the candidate implies that the candidate is nominated or endorsed by a political party, or that a political party approves of or associates with that candidate, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited, or rejected and replaced with "states no party preference."

NEW SECTION

WAC 434-215-130 Minor political party candidates and independent candidates. (1) In the election system enacted as chapter 2, Laws of 2005, there is no distinction between major party candidates, minor party candidates, or independent candidates filing for partisan congressional, state, or county office. All candidates filing for these partisan offices have the same filing and qualifying requirements. All candidates for partisan office have the option of stating on the ballot their preference for a political party, or stating no party preference. The party preference information plays no role in determining how candidates are elected to public office.

(2) The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates for partisan office to conduct nominating conventions and collect a sufficient number of signatures of registered voters do not apply to candidates filing for partisan congressional, state, or county office. The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates only apply to candidates for president and vice-president of the United States.

NEW SECTION

WAC 434-215-140 Voids in candidacy and vacancies in office. (1) The procedures established in RCW 29A.24.141 through 29A.24.191 for reopening candidate filing due to a void in candidacy or a vacancy in office apply to partisan congressional, state, or county office.

(2) As established in RCW 29A.24.141, a void in candidacy only occurs when no valid declaration of candidacy has been filed, or all persons who filed have either died or been disqualified. There is no void in candidacy as long as there is at least one candidate.

(3) If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

NEW SECTION

WAC 434-215-150 No major party ticket. The procedures in RCW 29A.28.011 allowing a major party to fill a vacancy on a major party ticket do not apply. The predecessor statute, RCW 29A.28.010, was repealed by chapter 2, Laws of 2005 (Initiative 872). Pursuant to chapter 2, Laws of 2005, there is no "major party ticket."

NEW SECTION

WAC 434-215-160 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 434-220-010	Partisan primaries.
WAC 434-220-020	Definitions.
WAC 434-220-030	Ballot layout and color—Consolidated ballots.
WAC 434-220-040	Ballot layout and color—Physically separate ballots.
WAC 434-220-050	Order of political parties.
WAC 434-220-060	Ballot programming—Consolidated ballots.
WAC 434-220-070	Polling place procedures—Physically separate ballots.
WAC 434-220-080	No record of political party affiliation.
WAC 434-220-090	Partisan primary recounts.

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

WAC 434-230-010 Sample ballots. Sample paper ballots shall be printed in substantially the same form as official ballots, but shall be a different color than the official ballot. Sample ballots ~~((for counties using electronic or mechanical voting systems))~~ shall be printed in a manner that makes them easily distinguishable from the official ballot. Sample ballots shall be available ~~((starting))~~ at least fifteen days prior to an election. Such sample ballots shall be made available through the office of the county auditor and at least one shall be available at all polling places on election day.

~~((Names of the candidates in each office to appear on the primary ballot shall be arranged on the sample ballot in the order provided by RCW 29A.36.121. The names of the candidates in each office to appear on the general election ballot shall be listed on the sample ballot in the order in which their names appear on the official ballot. State measures and local measures shall be in the same order as they appear on the official ballot.))~~

At any primary or election when a local voters' pamphlet is published which contains a full sample ballot, a separate sample ballot need not be printed.

Counties with populations of over five hundred thousand may produce more than one sample ballot for a primary or

election, each of which lists a portion of the offices and issues to be voted on at that election. Sample ballots may be printed by region or area (e.g., legislative district, municipal, or other district boundary) of the county, provided that all offices and issues to be voted upon at the election appear((s)) on at least one of the various sample ballots printed for such county. Each regional sample ballot shall contain all offices and issues to be voted upon within that region. A given office or issue may appear on more than one sample ballot, provided it is to be voted upon within that region. Sample ballots shall be made available and distributed to each polling place and to other locations within the appropriate region or area.

NEW SECTION

WAC 434-230-015 Ballot format. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes.

(3) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(4)(a) If the ballot includes a partisan office, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice-president appears on a general election ballot, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice-president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(5) Counties may use varying sizes and colors of ballot cards if such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate absentee ballots, poll ballots, or provisional ballots.

(6) Ballots shall be formatted as provided in RCW 29A.36.170. Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.121, 29A.36.161(4), and 29A.36.191.

NEW SECTION

WAC 434-230-025 Order of offices. Measures and offices must be listed in the following order, to the extent that they appear on a primary or election ballot:

(1) Initiatives to the people;

- (2) Referendum measures;
- (3) Referendum bills;
- (4) Initiatives to the legislature and any alternate proposals;
- (5) Proposed constitutional amendments (senate joint resolutions, then house joint resolutions);
- (6) Countywide ballot measures;
- (7) President and vice-president of the United States;
- (8) United States senator;
- (9) United States representative;
- (10) Governor;
- (11) Lieutenant governor;
- (12) Secretary of state;
- (13) State treasurer;
- (14) State auditor;
- (15) Attorney general;
- (16) Commissioner of public lands;
- (17) Superintendent of public instruction;
- (18) Insurance commissioner;
- (19) State senator;
- (20) State representative;
- (21) County officers;
- (22) Justices of the supreme court;
- (23) Judges of the court of appeals;
- (24) Judges of the superior court; and
- (25) Judges of the district court.

For all other jurisdictions, the offices in each jurisdiction shall be grouped together and listed by position number according to county auditor procedures.

NEW SECTION

WAC 434-230-035 Office format. (1) The name of each office must be printed on the ballot.

(2) The description "nonpartisan office" must be printed either for each office or as a heading above a group of nonpartisan offices.

(3) If the term of office is not a full term, a description of the term (e.g., short/full term, two-year unexpired term) must be printed with the office name.

(4) Following each list of candidates shall be a response position and a space for writing in the name of a candidate.

(5) Each office or position must be separated by a bold line.

(6) On a general election ballot in a year that president and vice-president are elected, each political party's candidates for president and vice-president shall be provided one vote response position for that party.

NEW SECTION

WAC 434-230-045 Candidate format. (1) For each office or position, the names of all candidates shall be listed together. If the office is on the primary election ballot, no candidates skip the primary and advance directly to the general election.

(2)(a) On the primary election ballot, candidates shall be listed in the order determined by lot.

(b) On the general election ballot, the candidate who received the highest number of votes in the primary shall be

listed first, and the candidate who received the second highest number of votes in the primary shall be listed second.

(c) The political party that each candidate prefers is irrelevant to the order in which the candidates appear on the ballot.

(3) Candidate names shall be printed in a type style and point size that can be read easily. 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, but are not limited to, printing a smaller point size or different type style.

(4) For partisan office:

(a) If the candidate stated his or her preference for a political party on the declaration of candidacy, that preference shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith

(Prefers Example Party)

(b) If the candidate did not state his or her preference for a political party, that information shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith

(States No Party Preference)

(c) The party preference line for each candidate may be in smaller point size or indented.

(d) The same party preference information shall be printed on both primary and general election ballots.

(5) If the office is nonpartisan, only the candidate's name shall appear. Neither "nonpartisan" nor "NP" shall be printed with each candidate's name.

(6) The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

NEW SECTION

WAC 434-230-055 Partisan primary. In a primary for partisan congressional, state or county office conducted pursuant to chapter 2, Laws of 2005 (Initiative 872):

(1) Voters are not required to affiliate with a political party in order to vote in the primary election. For each office, voters may vote for any candidate in the race.

(2) Candidates are not required to obtain the approval of a political party in order to file a declaration of candidacy and appear on the primary or general election ballot as a candidate for partisan office. Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. A candidate's political party preference is not used to determine which candidates advance to the general election.

(3) Based on the results of the primary, the two candidates for each office who receive the most votes and who receive at least one percent of the total votes cast for that office advance to the general election. The primary election

does not serve to nominate any political party's candidates, but serves to winnow the number of candidates down to a final list of two for the general election. Voters in the primary are casting votes for candidates, not choosing a political party's nominees. RCW 29A.36.191 does not apply since the predecessor statute, RCW 29A.36.190, was repealed in chapter 2, Laws of 2005.

(4) Chapter 2, Laws of 2005 repealed the prior law governing party nominations. Political parties may nominate candidates by whatever mechanism they choose. The primary election plays no role in political party nominations, and political party nominations are not displayed on the ballot.

(5) If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-230-060 Primary votes required for appearance on general election ballot. Following any (~~nonpartisan~~) primary, (~~no~~) a candidate's name shall be entitled to appear on the general election ballot (~~unless~~) if he or she receives the greatest or the next greatest number of votes for the office and additionally receives at least one percent of the total votes cast for the office.

~~((Following any partisan primary, no major political party candidate's name shall be entitled to appear on the general election ballot unless he or she receives a plurality of votes cast for the candidates of his or her party for that office. The requirement in RCW 29A.36.191 that a candidate for partisan office receive at least one percent of the votes cast for that office in order to appear on the general election ballot is unenforceable based on *Libertarian Party v. Sam Reed*, Thurston County Superior Court No. 04-2-01974-2 (2004).))~~

NEW SECTION

WAC 434-230-085 Candidate who qualifies for more than one office. In the event a candidate, as a result of write-in votes in the primary, qualifies to appear on the general election ballot for more than one office, the candidate may notify the county auditor in writing within three days of certification of the primary of the single office for which he or she desires to appear on the general election ballot. If the candidate fails to notify the county auditor, the county auditor shall determine the single office for which the candidate shall appear on the general election ballot. Any void in candidacy for other positions thus created will be handled as provided by law.

NEW SECTION

WAC 434-230-095 When a candidate dies or is disqualified. The procedures in RCW 29A.28.021 allowing a political party to appoint a replacement candidate if the party's candidate dies or is disqualified do not apply. The predecessor statute, RCW 29A.28.020, was repealed by chapter 2, Laws of 2005 (Initiative 872).

NEW SECTION

WAC 434-230-110 President and vice-president of the United States. (1) When the race for president and vice-president appears on a general election ballot, the candidates for these offices must be paired together.

(2) The full name of the political party, rather than an abbreviation, must be provided for each pair of candidates, with a designation that these candidates are the nominees of the party. The first letter of each word in the political party name must be capitalized. For example:

Example Party Nominees

(3) The order that candidates appear on the ballot is based on their political party. The political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the candidates of the other political parties following according to the votes cast for their nominees for president at the last presidential election. Candidates of parties that did not have nominees in the last presidential election follow in the order of their qualification with the secretary of state.

NEW SECTION

WAC 434-230-120 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-230-020	Placement of state ballot measures.
WAC 434-230-040	Candidate's political party designation—Primary to general.
WAC 434-230-050	Candidate nominated by two or more political parties or for two or more offices.
WAC 434-230-080	Judicial ballots—Form.
WAC 434-230-150	Ballot uniformity.
WAC 434-230-160	Poll-site voting instructions.
WAC 434-230-170	Ballot form.
WAC 434-230-190	Paper ballot uniformity.
WAC 434-230-200	Paper ballot instructions.
WAC 434-230-210	Paper ballots—Ballot form.

WAC 434-230-220

Same party designations used for primary and general elections.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-250-040 Instructions to voters. (1) ~~((In addition to the instructions required by chapters 29A.36 and 29A.40 RCW, instructions for properly voting and returning))~~ Instructions that accompany an absentee ballot must ~~((also))~~ include:

(a) How to ~~((correct a ballot by crossing out the incorrect vote and voting the correct choice))~~ cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an over-vote and no votes for that office or ballot measure will be counted;

(c) Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;

(d) An explanation of how to complete and sign the affidavit on the return envelope;

(e) An explanation of how to make a mark, witnessed by two other people, if unable to sign the affidavit;

(f) An explanation of how to place the ballot in the security envelope and place the security envelope in the return envelope;

(g) An explanation of how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Notice that postage is required, if applicable; ~~((and))~~

(i) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated deposit site no later than election day; ~~((and))~~

(j) ~~((How a voter can))~~ An explanation of how to learn about the locations, hours, and services((-)) of voting centers and ballot deposit sites, including the availability of accessible voting equipment((-);

County auditors may use existing stock of instructions appearing on absentee ballot ~~((instructions))~~ envelopes until December 1, 2008;

(k) For a primary election that includes a partisan office, a notice on a separate insert printed on colored paper explaining:

"Washington has a new primary. You do not have to pick a party. In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the August primary will advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(l)(i) For a general election that includes a partisan office, the following explanation:

"Washington has a new election system. In each race for partisan office, the two candidates who receive the most

votes in the August primary advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (1)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(m) Any other information the county auditor deems necessary.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-250-050 (~~(Ballot materials-)~~) **Envelopes.** ~~((In addition to the instructions and in addition to materials required by chapters 29A.36 and 29A.40 RCW, each))~~ Absentee ballots must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that:

I am a citizen of the United States;

I am a legal resident of the state of Washington;

I will be at least 18 years old on or before election day;

I am not presently denied my voting rights as a result of being convicted of a felony;

I have not been judicially declared mentally incompetent;

I have not already voted in this election; and

I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.

Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony

punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

The return envelope must include space for witnesses to sign.

The return envelope must conform to postal department regulations.

County auditors may use existing stock of absentee envelopes until December 1, 2008.

NEW SECTION

WAC 434-250-150 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than forty-seven days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) ~~((In addition to the information required in the notice of election published pursuant to RCW 29A.52.351 and 29A.52.311;))~~ A county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must ~~((also))~~ state:

(a) The election will be conducted by mail ~~((and regular polling places will not be open));~~

(b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;

(c) The location where voters may obtain replacement ballots;

(d) Whether return postage is required;

(e) The dates, times and locations of designated deposit sites and voting centers; and

(f) If the county auditor does not conduct all elections by mail, the fact that regular polling places will not be open.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

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; and
- (19) Voter registration forms(~~and~~
- (20) ~~For partisan primaries in counties using physically separate ballots, an "unvoted ballots" container with a numbered seal).~~

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

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;
- (5) Either sample ballots or voters' pamphlets;
- (6) Voter registration forms;
- (7) Election materials in alternative languages, if so required by the Voting Rights Act (42 U.S.C. 1973aa et seq.); (~~and~~)
- (8)(a) For a primary election that includes a partisan office, the same notice provided to absentee voters by WAC 434-250-040 (1)(k);
- (b) For a general election that includes a partisan office, the same notice provided to absentee voters by WAC 434-250-040 (1)(l); and
- (9) Any other items the county auditor deems necessary.

NEW SECTION

WAC 434-253-330 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

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:

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

(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;

(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;

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

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

~~(f) In the case of a partisan primary, 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:~~
(a) ~~If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.~~

~~(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 and counted.~~

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

~~(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).~~

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-262-160 Write-in-voting—Voter intent.

(1) In all cases of write-in votes the canvassing board shall exercise all reasonable efforts to determine the voter's intent. (~~(Write in votes are to be counted where abbreviations are used for office, position, or political party.)~~) Write-in votes in the general election are not to be counted for any person who filed for the same office as either a regular or write-in candidate at the preceding primary and failed to qualify for the general election. If a write-in declaration of candidacy has been filed, the voter need only write in that candidate's name in order for the vote to be counted; the candidate's party preference does not impact whether the write-in vote shall be counted. If no declaration of write-in candidacy has been filed, the voter must write in the name of the candidate (~~(, the political party, if applicable.)~~) and, if the office (~~(and/)~~) or position number cannot be determined by the location of the write-in on the ballot, the office and position number, in order for the write-in vote to be counted.

(2)(a) If a write-in candidate for partisan office does not file a write-in declaration of candidacy but does qualify for the general election ballot, the candidate has not stated a preference for a political party and therefore shall have "(states no party preference)" printed on the general election ballot.

(b) If a write-in candidate for partisan office files a write-in declaration of candidacy and qualifies for the general election ballot, the party preference stated on the write-in declaration of candidacy, if any, shall be printed on the general election ballot.

NEW SECTION

WAC 434-262-210 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-335-040 Voting system requirements. (1)

No voting device or its component software may be certified by the secretary of state unless it:

- (a) Secures to the voter secrecy in the act of voting;
- (b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (c) Correctly registers all votes cast for any and all persons and for or against any and all measures;
- (d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;
- (e) Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper

record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; and

(f) Has been tested and approved by the appropriate independent testing authority approved by the United States election assistance commission(~~(, and~~

~~(g) For a partisan primary, prevents the counting of votes for candidates of more than one political party).~~)

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct;

(d) Produces precinct and cumulative totals in printed form; and

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.

(5) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal independent testing authority and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. In lieu of placing them in escrow, the source code and the working or compiled version may be deposited with the national software reference library. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-445 The preparation of logic and accuracy test decks. (1) Each county shall produce a test deck of ballots to be used in the official logic and accuracy

test to verify that the vote tabulating system is programmed to correctly count the ballots.

(2) The pattern to mark the test deck shall begin by giving the first candidate in each race one vote, the second candidate in each race two votes, the third candidate in each race three votes, etc. Once the pattern is completed for each race and issue, each remaining precinct or ballot style must be tested by using a minimum of one ballot that has a first choice marked for each race and issue. Additional votes may be added to ensure all responses for a race or issue have unique results. Another pattern may be used if it meets the requirements outlined in this section and is approved by the secretary prior to marking the test deck.

(3) The test deck must also test that the vote tabulating system is programmed to accurately count write-in votes, overvotes and blank ballots. The test deck must also include a sampling of all ballots that will be used during the election, including ballot on demand, alternative language ballots, and ballots marked with an electronic ballot marker.

~~((4) In a partisan primary:~~

~~(a) When a consolidated ballot is used, the test deck must test that the partisan and nonpartisan votes are counted properly for situations where just one party is selected, no party is selected, and both parties are selected; and~~

~~(b) When separate ballots are used, a test deck for each party must be prepared in addition to a test deck for nonpartisan races.))~~

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state

~~((:~~
~~(a) For candidates who filed during the regular filing period.))~~ within seven calendar days after filing their declaration of candidacy

~~((:~~
~~(b) For candidates who filed during a special filing period, or were selected by a political party pursuant to either RCW 29A.52.010 or 29A.24.140, within seven calendar days after the close of the special filing period or selection by the party).))~~

(2) For ballot measures, including initiatives, ~~((referenda))~~ referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not

later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

NEW SECTION

WAC 434-381-200 Political party preference information. If a state voters' pamphlet includes a race for partisan office, the pamphlet must include an explanation that each candidate for partisan office may state a political party that he or she prefers, and that a candidate's preference does not imply that the candidate is nominated or endorsed by the party or that the party approves of or associates with that candidate. The pamphlet must also explain that a candidate can choose to not state a political party preference.

WSR 08-10-056 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-92—Filed May 2, 2008, 1:47 p.m., effective May 5, 2008, 6:00 a.m.]

Effective Date of Rule: May 5, 2008, 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 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 the 2008 spring season. Chinook are available for treaty harvest based on the preseason forecast of 269,300 upriver spring chinook, or a downgraded forecast of 200,000 upriver spring chinook. Allows the sale of fish caught in the 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 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 1, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: May 2, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, 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 Yakama, 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. May 5 until 6:00 p.m. May 8, 2008

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

b) Gear: Gillnets; no minimum mesh size restriction

2. Open Periods: 6:00 a.m. May 5, 2008, 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. May 5, 2008 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, Little White Salmon (Drano Lake), 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 may not be sold. Sturgeon between 42 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.

5. 24-hour Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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

7. 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 down-

stream 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.

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

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

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

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

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

**WSR 08-10-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-94—Filed May 6, 2008, 4:23 p.m., effective May 6, 2008, 4:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

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

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. The Discovery Bay shrimp district closure is necessary, as insufficient shrimp are available to conduct a fishery. The state recreational share of spot shrimp will be taken by 3:00 p.m., May 7, in Marine Areas 9 and 10. 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: May 6, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-32500Z Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 11 and the Discovery Bay Shrimp District.

2) Effective 3:00 p.m., May 7, 2008 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 9 and 10.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500Y Shrimp—Areas and seasons (08-89)

**WSR 08-10-092
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**
(Health and Recovery Services Administration)
[Filed May 7, 2008, 8:24 a.m., effective May 8, 2008]

Effective Date of Rule: May 8, 2008.

Purpose: HRSA is creating new WAC 388-505-0230 Family-related institutional medical, to codify institutional

medical eligibility for clients who are categorically related to the temporary assistance for needy families (TANF) program. This rule-making action will bring the state into compliance with federal regulations. This rule will also clarify program rules for children admitted to medical facilities and psychiatric inpatient treatment.

Statutory Authority for Adoption: RCW 74.04.055, 74.04.057, 74.08.090, and 74.09.530.

Other Authority: 42 C.F.R. 441.151.

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: This rule will bring the state into compliance with federal regulations while the permanent rule-making process, initiated under WSR 07-12-031, is completed.

This continues the emergency rule that is currently in effect under WSR 08-03-036 while the department completes the permanent rule-making process. The permanent rule-making process is currently underway within the department. The existing rule was completely rewritten from a single WAC filing to a series of sections. The revised rule recently went through a usability study, was reviewed by eligibility staff, and by legal services. The next step in the permanent rule-making process is stakeholder review.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 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: April 24, 2008.

Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-505-0230 Family related institutional medical. This section describes how the department determines eligibility for institutional medical benefits for temporary assistance for needy families (TANF)-related clients and children under the age of twenty-one who reside in a medical institution or a psychiatric or chemical dependency facility.

(1) An individual over the age of twenty-one is eligible for categorically needy (CN) family-related institutional medical assistance when the individual:

(a) Meets U.S. citizenship or immigrant status as described in WAC 388-424-0010 (1) or (2);

(b) Meets the state residency requirement as described in chapter 388-468 WAC;

(c) Provides a valid social security number as described in chapter 388-476 WAC;

(d) Meets TANF eligibility requirements as described in WAC 388-400-0005, except for the requirement to participate in the Workfirst program under chapter 388-310 WAC;

(e) Has countable income below the applicable TANF payment standard based upon household size to include the institutionalized individual;

(f) Meets institutional status as described in WAC 388-513-1320 and resides in a medical institution, intermediate care facility for mentally retarded (ICF/MR), hospice care center, state veteran's facility, or nursing home; and

(g) Participates available income towards the cost of care as described in WAC 388-513-1380.

(2) An individual over the age of twenty-one is not eligible for family-related institutional medical assistance when the individual resides in a psychiatric facility, unless the individual is:

(a) A Medicaid recipient or has submitted an application for medical benefits prior to the individual's twenty-first birthday; and

(b) Receiving active psychiatric treatment and the treatment extends beyond the twenty-first birth date but the individual has not yet reached the age of twenty-two. (Eligibility in this circumstance terminates when the individual discharges from the facility or on the individual's twenty-second birthday, whichever happens first.)

(3) An individual over the age of twenty-one with income in excess of the TANF payment standard is not eligible for medically needy (MN) family-related institutional medical assistance.

(4) An individual aged nineteen through twenty-one is eligible for CN medical assistance under the family-related institutional medical program when the individual:

(a) Meets the requirements in subsection (1)(a),(b), and (c);

(b) Resides in a medical facility as described in subsection (1)(f), a psychiatric facility (IMD) or a chemical dependency facility;

(c) Has countable income below the one-person TANF standard; and

(d) Participates toward the cost of their care as described in WAC 388-513-1380.

(5) An individual aged eighteen through twenty-one with countable income below the payment standard described in WAC 388-478-0040 may be eligible for general assistance cash assistance for the individual's personal needs allowance.

(6) An individual under the age of nineteen is eligible for CN medical assistance under the family-related institutional medical program when the individual:

(a) Meets the requirements in subsection (1)(a), (b), and (c);

(b) Resides in a medical facility as described in subsection (1)(f), a psychiatric facility (IMD) or a chemical dependency facility;

(c) Has countable income below the applicable standard described in WAC 388-505-0210; and

(d) Participates toward the cost of their care as described in WAC 388-513-1380.

(7) When an individual under the age of twenty-one resides or is expected to reside thirty days or longer in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center or nursing facility, only the parental income the parent chooses to contribute is considered available.

(8) When an individual resides in a psychiatric facility or chemical dependency facility, parental income is considered as follows:

(a) It is available to an individual seventeen years of age or younger unless:

(i) The individual is expected to reside outside of the home for ninety days or longer; or

(ii) The individual is in court-ordered, out-of-home care in accordance with chapter 13.34 RCW; or

(iii) The department determines the parents are not exercising responsibility for the care and control of the individual.

(b) Parental income is considered available only as contributed to an individual over seventeen years of age but under nineteen who resides or is expected to reside in a psychiatric facility for thirty days or longer; and

(c) Parental income is not considered available to an individual between nineteen and twenty-one years of age who resides or is expected to reside in a psychiatric facility or chemical dependency facility for thirty days or longer.

(9) An individual under the age of twenty-one is considered for medically needy (MN) family-related institutional medical when the individual's countable income exceeds the standards in WAC 388-505-0210.

(10) A TANF-related individual who is not expected to reside in a medical facility for thirty days or longer is not eligible for family-related institutional medical. The individual's eligibility will be considered for a non-institutional medical program as described in WAC 388-505-0210, 388-505-0211, or 388-505-0220.

WSR 08-10-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-67—Filed May 7, 2008, 9:49 a.m., effective May 8, 2008, 12:01 a.m.]

Effective Date of Rule: May 8, 2008, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000D; and amending WAC 220-52-030.

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: Based on historical catches and on-site inspection, there should be adequate clams to sup-

port an eight-week season. Biotxin levels currently fall below the regulatory threshold. 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: May 7, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-03000D Commercial razor clams. Notwithstanding the provisions of WAC 220-52-030, effective 12:01 a.m. May 8, 2008, through 11:59 p.m. July 7, 2008, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 1, lying south of the Willapa Bay Ship Channel, west of Ellen Sands and north of the tip of Leadbetter point; and in those waters and attached beaches north of the line of boundary markers consisting of five red posts near the northern tip of Leadbetter Point; all other areas remain closed.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 8, 2008:

WAC 220-52-03000D Commercial razor clams.