

**WSR 09-21-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-235—Filed October 7, 2009, 1:10 p.m., effective October 7,  
2009, 1:10 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Sets one chinook directed fishery and one sturgeon directed fishery. Harvestable sturgeon and chinook remain available. Coho landings are expected to be minimal due to time, area and gear type restrictions. The select area seasons are consistent with the compact action of July 29, 2009. The seasons are consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the 2009 non-Indian salmon allocation agreement, and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of October 6, 2009. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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: October 7, 2009.

Philip Anderson  
Director

NEW SECTION

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

**1. Mainstem Columbia River**

a. SEASON: 7 PM October 7 to 7 AM October 8, 2009

b. AREA: SMCRA 1D, and 1E (Zones 4 - 5)

c. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. 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.

d. SANCTUARIES: Lewis-B, Sandy, and Washougal rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of eight (8) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

### 2. Mainstem Columbia River

a. SEASON: 7 AM to 7 PM October 8, 2009

b. AREA: SMCRA 1A, 1B, 1C, 1D and 1E (Zones 1 - 5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. 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.

d. SANCTUARIES: Elokommin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B.

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of eight (8) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

### 3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours are 6 PM - 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. 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.

d. ALLOWABLE SALES: Salmon.

### 4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 8 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. Weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon.

### 5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

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

d. ALLOWABLE SALES: Salmon.

**6. Quick Report:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick report requirement applies to all seasons described above (Columbia River and Select Areas).

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000R Columbia River season  
below Bonneville (09-233)

The following section of the Washington Administrative Code is repealed effective November 1, 2009:

WAC 220-33-01000S Columbia River season  
below Bonneville.

### WSR 09-21-036

#### EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-236—Filed October 13, 2009, 2:19 p.m., effective October 16, 2009, 12:01 p.m.]

Effective Date of Rule: October 16, 2009, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

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

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

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

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

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

Date Adopted: October 13, 2009.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-36000X 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 p.m. October 16 through 11:59 p.m. October 18, 2009, razor clam digging is allowed in Razor Clam Area 1 and that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the Copalis River (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. October 16 through 11:59 p.m. October 19, 2009, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. October 17 through 11:59 p.m. October 18, 2009, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Copalis River (Grays Harbor County) and the southern boundary of the Quinault Indian Nation (Grays Harbor County) and that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jeffer-

son County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 20, 2009:

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

**WSR 09-21-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-237—Filed October 13, 2009, 2:25 p.m., effective October 13, 2009, 2:25 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Sets chinook and sturgeon directed fisheries. Harvestable sturgeon and chinook remain available. Coho landings are expected to be minimal due to time, area and gear type restrictions. The select area seasons are consistent with the compact action of July 29, 2009. All seasons are consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the 2009 non-Indian salmon alloca-

tion agreement, and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of October 12, 2009. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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: October 13, 2009.

Lori Preuss  
for Philip Anderson  
Director

## NEW SECTION

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

### 1. Mainstem Columbia River

a. SEASON: 7:00 PM October 13 to 7:00 AM October 14, 2009

7:00 PM October 15 to 7:00 AM October 16, 2009

7:00 PM October 18 to 7:00 AM October 19, 2009

b. AREA: SMCRA 1D, and 1E (Zones 4 - 5)

c. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. 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.

d. SANCTUARIES: Lewis-B, Sandy, and Washougal rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of seven (7) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

### 2. Mainstem Columbia River

a. SEASON: 7:00 AM to 7:00 PM October 14, 2009

b. AREA: SMCRA 1A, 1B, 1C, 1D and 1E (Zones 1 - 5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. 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.

d. SANCTUARIES: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of seven (7) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

### 3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours are 6 PM - 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. 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.

d. ALLOWABLE SALES: Salmon.

#### 4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours 4 PM – 8 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. Weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon.

#### 5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

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

d. ALLOWABLE SALES: Salmon.

**6. Quick Report:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick report requirement applies to all seasons described above (Columbia River and Select Areas).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000S Columbia River season  
below Bonneville (09-235)

The following section of the Washington Administrative Code is repealed effective November 1, 2009:

WAC 220-33-01000T Columbia River season  
below Bonneville.

**WSR 09-21-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-239—Filed October 13, 2009, 2:34 p.m., effective October 15, 2009, 12:01 a.m.]

Effective Date of Rule: October 15, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The in-season forecast for fall chinook escapement to the Hanford Reach has fallen below the natural spawning escapement goal of 28,800 adult chinook. The revised total return estimate (spawning escapement + harvest) is predicted to be 33,381 adults. If the fishery is allowed to continue as scheduled through October 22, less than 26,000 adult chinook will remain to spawn based on the predicted final return and current harvest rate. Closing the salmon retention fishery eight days early will result in approximately 1,000 additional adult fish surviving to spawn. The 2009 harvest is well above the anticipated level and has already surpassed the 2008 harvest by more than forty percent. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 13, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900Z Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective October 15, through October 22, 2009, it is unlawful to retain salmon in those waters of the Columbia River from the Highway 395 Bridge at Pasco to Priest Rapids Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 23, 2009:

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

**WSR 09-21-044****EMERGENCY RULES****DEPARTMENT OF HEALTH**

(Medical Quality Assurance Commission)

[Filed October 13, 2009, 4:42 p.m., effective October 28, 2009]

Effective Date of Rule: October 28, 2009.

Purpose: WAC 246-919-396 and 246-918-075 create a background check temporary practice permit for physicians and physician assistants applying for licensure with an out-of-state address, those who have recently lived out-of-state and for those with a criminal history in Washington. This temporary practice permit will be issued for any applicant who has met all other licensure requirements except the national criminal background check requirement. However, the temporary practice permit will not be issued unless a Federal Bureau of Investigation (FBI) fingerprint card for the applicant has been received by the department. The background check temporary practice permit will allow them to practice up to six months while the FBI fingerprint card is being processed.

Statutory Authority for Adoption: RCW 18.130.064 and 18.130.075.

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 adopted emergency background check - temporary practice permit rules on June 29, 2009, and is developing permanent rules under RCW 34.05.310(4). Adoption of the emergency rules is necessary to allow time for experience with and comment on the current emergency rules before adopting permanent rules. The fingerprinting process is a lengthy process and delays in licensing of otherwise qualified applicants affects patient safety. Employers are affected by the licensure delays and are unable to fully staff hospitals and other medical facilities. Lack of staffing affects the patients and the facilities' ability to accept and safely care for patients. Underserved areas of the state are also affected. This rule qualifies for emergency

rule making for the preservation of the public health, safety and general welfare of the citizens of Washington state.

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 2, 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 2, Amended 0, Repealed 0.

Date Adopted: October 13, 2009.

Maryella E. Jansen

Executive Director

NEW SECTION

**WAC 246-918-075 Background check—Temporary practice permit.** The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the in-state background check, and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The MQAC will issue a temporary practice permit that is valid for three months. A one time extension of three months will be granted if the national background check report has not been received by the MQAC.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit serves as a license to practice medicine as a physician assistant.

(3) The MQAC issues a full license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

NEW SECTION

**WAC 246-919-396 Background check—Temporary practice permit.** The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the in-state background check, and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The MQAC will issue a temporary practice permit that is valid for three months. A one time extension of three months will be granted if the national background check report has not been received by the MQAC.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician during the time period specified on the permit. The temporary practice permit serves as a license to practice medicine.

(3) The MQAC issues a full license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

**WSR 09-21-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-223—Filed October 15, 2009, 11:08 a.m., effective October 15, 2009, 9:00 p.m.]

Effective Date of Rule: October 15, 2009, 9:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the shrimp pot and beam trawl fishery

for the season to protect shrimp during the egg bearing period. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: October 15, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

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

(1) Shrimp beam trawl gear:

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. October 15, 2009:

WAC 220-52-05100Z Puget Sound shrimp pot and beam trawl fishery—Season. (09-223)

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. October 31, 2009:

WAC 220-52-05100A Puget Sound shrimp pot and beam trawl fishery—Season.

**WSR 09-21-059**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-242—Filed October 15, 2009, 11:10 a.m., effective October 16, 2009]

Effective Date of Rule: October 16, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 upon recent field observations, large numbers of early stock coho have been holding in the lower Grays. Originally, the salmon and steelhead season was scheduled to close October 15. This extension will allow additional opportunity to harvest surplus hatchery fish. However, it will close before larger numbers of Endangered Species Act listed chum are typically present. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 15, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Grays River.** Notwithstanding the provisions of WAC 232-28-619, effective October 16, through October 25, 2009, a person may fish in those waters of the Grays River from the mouth to South Fork, and in West Fork Grays from the mouth to the hatchery intake/footbridge. Daily limit six salmon, of which no more than two may be adult Chinook; minimum size is 12 inches in length. Daily limit two hatchery steelhead; minimum size is 20 inches in length. Release all chum, wild coho, wild Chinook, and wild steelhead.

Night closure, anti-snagging, and stationary gear restrictions in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 26, 2009:

WAC 232-28-61900C Exceptions to statewide rules—Grays River.

**WSR 09-21-061**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-238—Filed October 15, 2009, 1:36 p.m., effective November 1, 2009]

Effective Date of Rule: November 1, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: An extension of Swift Reservoir provides additional recreational fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 15, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900W Exceptions to statewide rules—Swift Reservoir.** Notwithstanding the provisions of



WAC 232-28-619, effective November 1 through November 30, 2009, a person may fish in those waters of Swift Reservoir. Unless otherwise amended, all other permanent rules remain in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2009:

WAC 232-28-61900W      Exceptions to statewide rules—Swift Reservoir.

**WSR 09-21-062**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-240—Filed October 15, 2009, 1:40 p.m., effective October 15, 2009, 1:40 p.m.]

Effective Date of Rule: Immediately.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 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; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Discontinues sales of fish caught from platform or hook and line fisheries in the mainstem Columbia River after 6:00 p.m. October 16, 2009. The mainstem platform and hook and line fishery will remain open for subsistence use. Continues to allow [allow] sales of fish caught during the Yakama Nation tributary fisheries in Drano Lake, White Salmon and Klickitat rivers. Harvest of upriver bright chinook and Group B steelhead is 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 October 2 and October 12, 2009.

Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

New regulations for 2009 include fisheries that are described in the MOA between Washington state and the Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery (below Bonneville Dam) are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes in the fishery below Bonneville Dam).

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 15, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-32-05100Z 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, walleye, shad, carp, yellow perch, catfish, bass or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, except as provided in the following subsections; and the same prohibitions apply in the White Salmon River, and Klickitat River and Drano Lake (Little White Salmon River), except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

**1. Mainstem Columbia River above Bonneville Dam**

a) SEASON: Immediately until 6:00 PM October 16, 2009.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

**2. Columbia River Tributaries above Bonneville Dam**

a) SEASON: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b) AREA: White Salmon and Klickitat rivers and Drano Lake (Little White Salmon River)

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

d) Only fish that are caught during open Yakama Nation tributary fisheries may be sold. Fish that are sold outside a one-mile radius from the Klickitat Falls may be sold by Yakama Nation Transfer Permit only. Transfer Permits are also required for sales of fish from Drano Lake. Transfer Permits may be obtained from the Yakama Nation Tribal Council. Pursuant to Section 32.18.07 of the Yakama Law and Order Code, steelhead caught in the Klickitat River may not be sold.

**3. Mainstem Columbia River below Bonneville Dam**

a) SEASON: Immediately until 6:00 PM October 16, 2009, and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam," the area below Bonneville Dam is open for commercial sales only for enrolled Yakama Nation members and only during those times that commercial sales are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: (SMCRA) 1E: On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North Shore powerhouse, downstream to Beacon Rock (bank fishing only).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

**4. SANCTUARIES:** Standard river mouth and dam sanctuaries applicable to these gear types.

**5. ALLOWABLE SALES:** Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad may be sold or retained for subsistence. Sturgeon may not be sold, Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Sturgeon caught below Bonneville Dam may **NOT** be retained and may **NOT** be sold. Fish may **NOT** be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale. Fish caught in the mainstem Columbia River (SMCRA 1E, 1F, 1G, 1H) after 6:00 PM October 16 may not be sold but may be retained for subsistence. Steelhead caught in the Klickitat River may not be sold.

**6. ADDITIONAL REGULATIONS:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100Y	Columbia River salmon seasons above Bonneville Dam. (09-234)
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**WSR 09-21-063  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-241—Filed October 15, 2009, 2:01 p.m., effective October 21, 2009]

Effective Date of Rule: October 21, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sufficient numbers of wild steelhead have moved upriver from this section, allowing anglers additional opportunity to harvest adipose fin-clipped steelhead with minimal impact to wild fish. The fishery will reduce the number of excess hatchery-origin steelhead and consequently increase the proportion of natural-origin steel-

head on the spawning grounds. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 15, 2009.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900B Exceptions to statewide rules—Columbia, Entiat, Icicle, Methow, Okanogan, Similkameen, and Wenatchee rivers** Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect: Mandatory retention of adipose fin-clipped hatchery origin steelhead. Release any steelhead with one or more round holes punched in the caudal (tail) fin. Current salmon and all other game fish gear rules do not apply during steelhead season.

(1) Effective immediately until further notice, a person may fish for steelhead in the Columbia River from Rock Island Dam to 400 feet below Chief Joseph Dam. Selective gear rules, except bait and motorized vessels allowed. Night closure in effect. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(2) Effective immediately until further notice, a person may fish for steelhead in the Entiat River upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River to 800 feet downstream of the Entiat National Fish Hatchery outfall. Night closure and selective gear rules apply, except motorized vessels allowed. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(3) Effective immediately through November 15, 2009, a person may fish for salmon and steelhead in waters of Icicle River from the mouth to 500 feet downstream of Leavenworth National Fish Hatchery Barrier Dam. Night closure and selective gear rules apply. Daily limit may contain up to four adipose fin clipped steelhead, minimum size 20 inches; and three coho salmon, minimum size 12 inches. Release all floy-tagged coho.

(4) Effective immediately until further notice, a person may fish for steelhead in waters of the Methow River from the Hwy. 97 Bridge in Pateros upstream to the confluence

with the Chewuch River. Night closure and selective gear rules apply, except motorized vessels allowed from the Hwy. 97 Bridge in Pateros upstream to the second powerline crossing upstream of Pateros. Whitefish gear rules do not apply. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(5) Effective immediately until further notice, a person may fish for steelhead in the Okanogan River, except CLOSED WATERS from the Lake Osoyoos Control Dam (Zosel Dam) downstream to the first Hwy 97 Bridge below Oroville, Washington. Night closure and selective gear rules apply, except motorized vessels are allowed. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(6) Effective November 1, 2009, until further notice, a person may fish for steelhead in waters of the Similkameen River from the mouth to 400 feet below Enloe Dam. Night closure and selective gear rules apply. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(7) Effective immediately until further notice, a person may fish for steelhead in waters of the Wenatchee River from the mouth to the sign about 800 feet below the downstream side of Tumwater Dam. Night closure and selective gear rules apply. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective October 21, 2009:

WAC 232-28-61900V	Exceptions to statewide rules—Columbia, Entiat, Icicle, Methow, Okanogan, Similkameen, and Wenatchee rivers. (09-227)
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#### **WSR 09-21-074**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 16, 2009, 12:56 p.m., effective October 16, 2009, 12:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amending WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care? and adopting new WAC 388-106-0126 If I am under age twenty-one, how does CARE use criteria to place me in a classification group for in-home care?

These emergency rules replace rules filed as WSR 09-14-046 and 09-20-038. The department is revising WAC 388-106-0125 to amend the in-home classifications to allow for the reduction of in-home base hours for each of the seventeen classification groups. The department is adopting new WAC to comply with a United States District Court order to

exclude children and youth under the age of twenty-one from the rules filed as WSR 09-14-046. This filing is a correction to the previous filing, which inadvertently excluded persons who are age twenty-one from either group.

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

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state 2009-11 budget (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The Washington state 2009-11 operating budget (ESHB 1244) directs the department to reduce the number of in-home hours authorized. The hours awarded for in-home long-term care for each of the seventeen CARE classification groups are reduced by a certain percentage. As instructed by the legislature, classification groups with greater care needs receive a smaller percentage reduction than classification groups with lesser care needs.

The United States District Court in Tacoma issued an order stating "that the Department will not apply the emergency rules contained in WSR 09-14-046 to the Medicaid in-home personal care services provided to children and youth under the age of 21." These emergency rules replace rules filed as WSR 09-14-046 and 09-20-038.

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 1, 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 1, Amended 1, Repealed 0.

Date Adopted: October 14, 2009.

Stephanie E. Vaughn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-10-022, filed 4/25/08, effective 5/26/08)

**WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care?** CARE uses the criteria of cogni-

tive 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 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)~~) 416 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with (~~(350)~~) 346 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)~~) 277 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with (~~(240)~~) 234 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with (~~(190)~~) 185 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with (~~(145)~~) 138 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)~~) 194 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with (~~(180)~~) 174 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with (~~(140)~~) 132 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with (~~(95)~~) 87 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)~~) 147 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with (~~(90)~~) 82 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with (~~(52)~~) 47 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))~~ 147 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ~~((110))~~ 101 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ~~((90))~~ 82 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ~~((52))~~ 47 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))~~ 71 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ~~((62))~~ 56 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ~~((29))~~ 26 base hours if you have an ADL score of 0-4.

#### NEW SECTION

**WAC 388-106-0126 If I am under age twenty-one, how does CARE use criteria 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 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.

#### **WSR 09-21-076**

#### **EMERGENCY RULES**

#### **PROFESSIONAL EDUCATOR**

#### **STANDARDS BOARD**

[Filed October 16, 2009, 1:23 p.m., effective October 16, 2009, 1:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amends WAC 181-79A-250 (2)(a)(i), given current budget constraints, teachers who are unemployed or subject to reduction-in-force are granted an additional two-year renewal within nine years of the date of their last employment. Teachers at risk of having their two-year experience requirement expire due to unemployment are provided an adoption to renew one [once] they have returned to employment. Also permits renewal for teachers participating in the external assessment if their certificate expires in 2010

or 2011. Clarification language is also provided in subsection (4)(i)(A).

Citation of Existing Rules Affected by this Order:  
Amending WAC 181-79A-250.

Statutory Authority for Adoption: RCW 28A.410.210.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The 2009 legislature passed ESHB 2261 requiring changes to certification requirements that place candidate[s] with licenses expiring in jeopardy without these changes. Additionally, teachers being RIF'd due to budget crisis face the same possibility or [of] expiring licenses during this transition. Finally, these changes leave the requirements for professional growth planning unclear.

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 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: September 23, 2009.

David Brenna  
Legislative and  
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-15-141, filed 7/22/08, effective 8/22/08)

**WAC 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements.** The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as

defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program. Individuals who hold a residency certificate that expires in 2010 or 2011 may have the certificate renewed for two years by registering for the external assessment pursuant to WAC 181-79A-206. Provided, that individuals who are unable to complete the professional certificate program by the expiration date on the two-year renewal who have not taught for any portion of the nine years between employment and expiration date of the renewal can obtain an additional two-year renewal upon verification they had been unemployed during those years, been on a leave of absence or were unemployed due to a reduction in force.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

(iv) Individuals who complete the requirements in their school district professional growth plan may use that completed plan to maintain the continuing certificate or renew the professional certificate.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have

their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 ~~((3))~~ (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

~~((d) Renewals based on conditions other than those described in WAC 181-79A-250 (2)(a) and (b) may be appealed to the professional educator standards board, or its designated appeals committee. The following conditions apply to such appeals:~~

~~(i) Individuals who appeal shall present a rationale and evidence to support their request to have their residency certificates renewed.~~

~~(ii) The professional educator standards board, or its designated appeals committee, in making its decision shall determine the length of the renewal and may establish specific conditions (such as course work requirements) as prerequisites for the reissuance of the residency certificate.)~~

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience require-

ment and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in RCW 28A.415.023.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five year periods for individuals employed as a princi-

pal, assistant principal or program administrator in a public school or state board of education-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that(~~(-~~

~~(I) Emphasize continuous learning;~~

~~(II) Positively impact student learning;~~

~~(III)) relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b)(~~(;~~~~

~~(IV) Explicitly connect to the evaluation process;~~

~~(V) Reflect contributions to the school, district, and greater professional community; and~~

~~(VI) Identify areas in which knowledge and skills need to be enhanced)).~~

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or state board of education-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, state board of education-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

(III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or state board of education-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.

#### WSR 09-21-079

#### EMERGENCY RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Order 09-244—Filed October 16, 2009, 1:40 p.m., effective October 18, 2009]

Effective Date of Rule: October 18, 2009.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100C and 220-47-41100K; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation modifies fishing schedules for Salmon Management and Catch Reporting Areas 7 and 7A per agreement with tribal comanagers. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 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: October 16, 2009.

Philip Anderson  
Director

#### NEW SECTION

##### **WAC 220-47-31100C Purse seines—Open periods.**

Notwithstanding the provisions of WAC 220-47-311, effective October 18 through October 19, 2009, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with purse seine gear in waters of Puget Sound Management and Catch Reporting Areas 7 and 7A.

#### NEW SECTION

##### **WAC 220-47-41100K Gill nets—Open periods**

Notwithstanding the provisions of WAC 220-47-311, effective October 18 through October 19, 2009, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with gill net gear in waters of Puget Sound Management and Catch Reporting Areas 7 and 7A.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective October 20, 2009:

WAC 220-47-31100C Purse seines—Open periods.

WAC 220-47-41100K Gill nets—Open periods.

**WSR 09-21-098**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-245—Filed October 20, 2009, 3:47 p.m., effective October 20, 2009, 3:47 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Sets nontreaty commercial fishing periods. Harvestable sturgeon and salmon remain available. Coho landings are expected to remain within expectations due to time, area and gear type restrictions. Reduces sanctuaries to the standard (A) size. All seasons are consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the 2009 non-Indian salmon allocation agreement, and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of October 19, 2009. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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: October 20, 2009.

Philip Anderson  
Director

## NEW SECTION

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

### 1. Mainstem Columbia River

a. SEASON: 7:00 PM October 20 to 7:00 AM October 21, 2009

7:00 PM October 22 to 7:00 AM October 23, 2009

7:00 PM October 25 to 7:00 AM October 26, 2009

b. AREA: SMCRA 1D, and 1E (Zones 4 - 5)

c. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. 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.

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of six (6) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open, EXCEPT no sturgeon sales allowed for the October 25-26 fishery. For the fisheries on October 20-21 and 22-23, the sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

### 2. Mainstem Columbia River

a. SEASON: 7:00 AM to 7:00 PM October 21, 2009

b. AREA: SMCRA 1A, 1B, 1C (Zones 1 - 3)

c. GEAR: 6-inch maximum mesh size; un-slackened floater gillnet. Drift gillnets only. Monofilament gear is allowed. 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.

d. SANCTUARIES: Elokomin-A, Cowlitz, Kalama-A, Lewis-A

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of six (6) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

### 3. Mainstem Columbia River

a. SEASON: 7:00 AM to 7:00 PM October 22, 2009

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1 - 5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. 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.

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of six (6) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

### 4. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours are 6 PM - 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. 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.

d. ALLOWABLE SALES: Salmon.

#### 5. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 8 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms. Weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. South Channel area: Net length maximum of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

d. ALLOWABLE SALES: Salmon.

#### 6. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

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

d. ALLOWABLE SALES: Salmon.

**7. Quick Report:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick report requirement applies to all seasons described above (Columbia River and Select Areas).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000T Columbia River season below Bonneville (09-237)

The following section of the Washington Administrative Code is repealed effective November 1, 2009:

WAC 220-33-01000U Columbia River season below Bonneville.

#### WSR 09-21-099

#### EMERGENCY RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Order 09-246—Filed October 20, 2009, 3:47 p.m., effective October 22, 2009]

Effective Date of Rule: October 22, 2009.

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

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

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

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

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

Reasons for this Finding: The technical advisory committee (TAC) reviewed the Columbia River early and late coho stock status and reported the overall run was tracking at or above expectations of a total return of 700,000 adults. TAC observed that the early stock return appears to be tracking slightly less than the preseason forecast of 466,700 fish, while the late stock return appears to be currently tracking ahead of the preseason forecast of 236,600. At Bonneville Dam, 196,300 adult coho had been counted through October 18, compared to the preseason expectation of 160,100 fish. Surplus hatchery origin coho are available for harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 20, 2009.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900D Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective October 22, through December 31, 2009, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Lower Columbia River from the Rocky Point/Tongue Point line upstream to a line projected from the Warrior Rock Lighthouse through Red Buoy #4 to the orange marker atop the dolphin on the lower end of Bachelor Island - The daily limit is six fish. Up to three may be adults, of which no more than two may be hatchery steelhead. Release all salmon other than hatchery coho. Salmon minimum size is 12 inches.

(2) Lower Columbia River from a line projected from the Warrior Rock Lighthouse upstream to Bonneville Dam - The daily limit is six fish. Up to three may be adults, of which no more than two may be hatchery steelhead. Only one adult Chinook may be retained. Release all salmon other than Chinook and hatchery coho. Salmon minimum size is 12 inches.

(3) Bonneville Dam upstream to the Hwy. 395 Bridge at Pasco - The daily limit is six fish. Up to three may be adults. No more than two may be hatchery steelhead or Chinook, or one of each. Release all salmon other than Chinook and coho. Release wild coho from Bonneville Dam to the Hood River Bridge. Salmon minimum size is 12 inches.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2010:

WAC 232-28-61900D	Exceptions to statewide rules—Columbia River.
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#### **WSR 09-21-103**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 21, 2009, 7:51 a.m., effective October 22, 2009]

Effective Date of Rule: October 22, 2009.

Purpose: The department is amending chapter 388-828 WAC, the DDD assessment, to add the children's intensive

in-home behavioral support program (CIIBS) eligibility algorithm.

Citation of Existing Rules Affected by this Order: Amending WAC 388-828-1620.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Section 205 (1)(i), chapter 329, Laws of 2008, 2008 ESHB 2687.

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 2008 supplemental budget, ESHB 2687, section [205](1)(i) directs the department to develop and implement a federal HCBS waiver to provide intensive behavior support services for up to one hundred children with developmental disabilities and their families. DDD is incorporating rules for the CIIBS eligibility algorithm into chapter 388-828 WAC. An initial public notice was filed September 29, 2008, as WSR 08-20-087. This 4th emergency rule extends the emergency rule filed June 24, 2009, as WSR 09-14-044.

CMS approved the waiver as of May 1, 2009, and stakeholder work continues. The rules are expected to be formally proposed by November 2009.

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 5, 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 5, Amended 1, Repealed 0.

Date Adopted: September 30, 2009.

Stephanie E. Vaughn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1620 How does DDD determine which panels are mandatory in your DDD assessment?** DDD determines which panels are mandatory in your DDD assessment by assigning you to a client group using the following table:

If you are approved by DDD to receive:	Your client group is:
(1) DDD ( <del>DCBS</del> ) HCBS waiver services per chapter 388-845 WAC; or (2) State-only residential services per chapter 388-825 WAC; or (3) ICF/MR services per 42 CFR 440 and 42 CFR 483.	Waiver and State-Only Residential
(4) Medicaid personal care (MPC) per chapter 388-106 WAC; or (5) DDD HCBS Basic, Basic Plus, CIIBS or Core waiver services per chapter 388-845 WAC and personal care services per chapter 388-106 WAC; or (6) Medically intensive health care program services per chapter 388-551 WAC; or (7) Adult day health services per chapter 388-106 WAC; or (8) Private duty nursing services per chapter 388-106 WAC; or (9) Community options program entry system (COPEs) services per chapter 388-106 WAC; or (10) Medically needy residential waiver services per chapter 388-106 WAC; or (11) Medicaid nursing facility care services per chapter 388-106 WAC.	Other Medicaid Paid Services
(12) County employment services per chapter 388-850 WAC. (13) Other DDD paid services per chapter 388-825 WAC, such as: (a) Family support services; or (b) Professional services. (14) Nonwaiver voluntary placement program services per chapter 388-826 WAC; (15) SSP only per chapter 388-827 WAC;	State-Only Paid Services
(16) You are not approved to receive any DDD paid services.	No Paid Services

NEW SECTION

**WAC 388-828-8500 What is the children's intensive in-home behavioral support (CIIBS) program algorithm?** The children's intensive in-home behavioral support (CIIBS) program algorithm is a formula in the DDD assessment that calculates your out-of-home placement risk score to determine your eligibility for the CIIBS waiver per chapter 388-845 WAC.

NEW SECTION

**WAC 388-828-8505 When does the DDD assessment run the CIIBS algorithm to determine your eligibility for the CIIBS waiver?** The DDD assessment runs the CIIBS algorithm to determine your eligibility for the CIIBS waiver when your support assessment is moved to current and:

- (1) You are the assessed age of eight or older and under age eighteen;
- (2) Your behavior acuity level is high per WAC 388-828-5640;
- (3) Your caregiver's risk score is medium, high or immediate per WAC 388-828-5300;
- (4) Your ICF/MR score is eligible per WAC 388-828-4400; and
- (5) You are not enrolled in the CIIBS waiver.

NEW SECTION

**WAC 388-828-8510 What elements does the CIIBS algorithm use to calculate your out-of-home placement risk score?** The CIIBS algorithm uses the following elements to determine your out-of-home placement risk score:

- (1) The DDD protective supervision acuity scale (WAC 388-828-5000 to 388-828-5100);
- (2) The DDD caregiver status acuity scale (WAC 388-828-5120 to 388-828-5360);
- (3) The DDD behavioral acuity scale (WAC 388-828-5500 to 388-828-5640);
- (4) The DDD activities of daily living (ADL) acuity scale (WAC 388-828-5380 to 388-828-5480);
- (5) The DDD mobility acuity scale (WAC 388-828-5380 to 388-828-5480); and
- (6) Eligible condition of "autism" as indicated in the DDD determination (WAC 388-823-0500).

NEW SECTION

**WAC 388-828-8515 How does DDD determine your CIIBS out-of-home placement risk score?** Your CIIBS out-of-home placement risk score is calculated using the following table:

Section and WAC reference	If you meet the following criteria:	Then adjust your score by:	Score if you meet criteria
	Clients meeting eligibility criteria in WAC 388-828-8505		<b>Beginning Score = 0</b>
DDD Determination WAC 388-823-0500	Eligible condition of autism in the DDD determination.	Adding 40 points	=
ADL Acuity Level WAC 388-828-5480	Your ADL support needs level = high, medium or low	Subtracting 54 points	=

Section and WAC reference	If you meet the following criteria:	Then adjust your score by:	Score if you meet criteria
Behavior Acuity Scale WAC 388-828-5500 through 388-828-5640	Your most prominent behavior = assault/injury and Severity of your most prominent behavior = "potentially dangerous" or "life threatening"	Adding 14 points	=
Protective Supervision Acuity Scale WAC 388-828-5060	Your answer to the following question: "What level of monitoring does the client typically require during awake hours?" = "Line of sight/earshot"	Adding 13 points	=
DDD Caregiver Status Acuity WAC 388-828-5300	Your caregiver risk level = high or immediate	Adding 136 points	=
Backup Caregiver Status WAC 388-828-5320	Your answer to the following question: "Under what conditions are other care- giver(s) available?" = "No other caregiver available"	Adding 33 points	=
Mobility Acuity Scale WAC 388-828-5900	Your mobility acuity level = high, medium or low	Subtracting 15 points	=
		Sum of all of scores above is your CIIBS out-of-home placement risk score	=

NEW SECTION

**WAC 388-828-8520 How does DDD determine if I am eligible for the CIIBS waiver?** DDD uses the following table to determine if you are eligible for the CIIBS waiver based on your CIIBS out-of-home placement risk score per WAC 388-828-8510:

If your CIIBS out-of-home placement risk score is:	Then your CIIBS eligibility is:
96 or greater	Yes - Severe
17 through 95	Yes - High
Less than 17	No - (not eligible)