

**WSR 14-20-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed September 24, 2014, 1:05 p.m., effective September 24, 2014, 1:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amendments in Title 388 WAC remove medical references, support the creation of the housing and essential needs (HEN) referral program and remove references to the Alcohol and Drug Addiction Treatment and Support Act (ADATSA). These amendments are currently in effect via emergency rule making filed on May 29, 2014, as WSR 14-12-041.

2E2SHB 1738, Laws of 2011, designated the health care authority (HCA) as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. HCA recodified medical assistance program rules to Title 182 WAC. Accordingly, the department must eliminate corresponding rules and medical references under Title 388 WAC. Amendments also support the creation of the new HEN referral program created under SHB 2069 (2013 legislative session) and also remove references related to ADATSA, as the legislature did not appropriate funds for ADATSA. Beginning January 1, 2014, ADATSA-related medical care services recipients are medicaid eligible under the Affordable Care Act.

Additional amendments spell out the acronym, ABD, identifying it as the aged, blind or disabled program. The department is in the process of proposing amendments to these rules permanently via the regular rule-making process. The CR-102 proposed rule making was filed on June 3, 2014, via WSR 14-12-076. The public hearing was held on July 22, 2014. The department is in the process of reviewing comments received during the public hearing comment period.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0005, 388-406-0035, 388-406-0045, 388-418-0005, 388-424-0010, 388-424-0015, 388-436-0030, 388-450-0015, 388-450-0025, 388-450-0040, 388-450-0156, 388-450-0162, 388-450-0170, 388-472-0005, and 388-473-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011; SHB 2069; and RCW 41.05.021, 74.04.050, 74.08.090, 74.09.035, 74.09.530, and the 2013 biennial budget.

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: Amendments remove medical references. More specifically, 2E2SHB 1738, Laws of 2011, designated HCA as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. DSHS worked with HCA to repeal medical assistance program rules under Title 388 WAC in support of HCA's efforts to recodify medical assistance program rules under Title 182 WAC. HCA recodified medical assis-

tance program rules at Title 182 WAC, effective October 1, 2013. Accordingly, the department must eliminate corresponding rules under Title 388 WAC. Amendments remove references to the ADATSA program, because the legislature did not appropriate funds for the ADATSA program. Beginning January 1, 2014, ADATSA-related medical care services recipient[s] are medicaid eligible under the Affordable Care Act. Amendments also support the creation of the new HEN referral program created under SHB 2069, which was signed by the governor on June 30, 2013.

The department is in the process of proposing amendments to these rules permanently via the regular rule-making process. The CR-102 proposed rule making was filed on June 3, 2014, via WSR 14-12-076. The public hearing was held on July 22, 2014. The department is in the process of reviewing comments received during the public hearing comment period.

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 15, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 15, Repealed 0.

Date Adopted: September 22, 2014.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-406-0005 Can I apply for cash(~~(, medical cash))~~) or Basic Food?** (1) You can apply for any benefit the department offers, including cash assistance(~~(, medical assistance,))~~) or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child; or

(ii) An incapacitated person(~~(, or~~

~~(iii) Someone who is deceased)).~~

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) (~~If you get supplemental security income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.~~

~~(5))~~) A person or agency may apply for aged, blind, or disabled (ABD) cash (~~(or medical assistance)~~) for you if:

- (a) You temporarily live out-of-state; and
- (b) You are a Washington state resident.

~~((6))~~ (5) When you are confined or incarcerated in a Washington state public institution, you may apply for cash ~~((or medical assistance))~~ if you meet the following criteria:

(a) You are confined by or in the following public institutions:

- (i) Department of corrections;
- (ii) City or county jail; or
- (iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

~~((7)) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:~~

- ~~(a) Meet the criteria of subsection (6) in this section; and~~
- ~~(b) Were receiving medicaid immediately before confinement or within the five years prior to confinement.~~

~~(8) If you meet the criteria in subsection (6) but did not receive medicaid within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.~~

~~(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty-five days prior to release. We will process your application for medical assistance when we receive it, and if eligible, we will authorize medical benefits upon the youth's release from confinement.)~~

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

**WAC 388-406-0035 How long does the department have to process my application?** (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

~~(a) ((If you are pregnant, we must process your application for medical within fifteen working days;~~

~~(b))~~ If you are applying for aged, blind, or disabled (ABD) cash assistance, ((alcohol or drug addiction treatment (ADATSA), or medical assistance)) or a referral to the housing and essential needs (HEN) program, we must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045((; and

~~(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days))~~.

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for supplemental security income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-406-0045 Is there a good reason my application for cash ~~((or medical))~~ assistance has not been processed?** If your application for cash ~~((or medical))~~ assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

(i) Medical documentation;

(ii) For cash assistance, extensive property appraisals; or

(iii) Out-of-state documents or correspondence.

~~(3) ((For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.~~

(4)) For aged, blind, or disabled (ABD) cash assistance, or a referral to the housing and essential needs (HEN) program, good cause exists if you apply when you are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a).

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

**WAC 388-418-0005 How will I know what changes to report?** (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your

reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

~~((H)) (a) If you receive (assistance from any of the programs listed in subsection (1), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the first program you receive benefits from:~~

~~(a) If you receive long term care benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPES, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:~~

- ~~(i) Residence;~~
- ~~(ii) Marital status;~~
- ~~(iii) Living arrangement;~~
- ~~(iv) Income;~~
- ~~(v) Resources;~~
- ~~(vi) Medical expenses; and~~
- ~~(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.~~

~~(b) If you receive medical benefits based on age, blindness, disability (SSI related medical), or ADATSA benefits, you need to tell us if:))~~

~~((i) You move;~~

- ~~(ii) A family member moves into or out of your home;~~
- ~~(iii) Your resources change; or~~
- ~~(iv) Your income changes. This includes the income of you, your spouse or your child living with you.~~

~~(e) If you receive)) cash benefits, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) Someone moves out of your home;~~
- ~~(iii) Your total gross monthly income goes over the:~~
- ~~(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or~~
- ~~(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;~~
- ~~(iv) You have liquid resources more than four thousand dollars; or~~
- ~~(v) You have a change in employment. Tell us if you:~~
- ~~(A) Get a job or change employers;~~
- ~~(B) Change from part-time to full-time or full-time to part-time;~~
- ~~(C) Have a change in your hourly wage rate or salary; or~~
- ~~(D) Stop working((; or~~
- ~~(E) See WAC 182-504-0100 for medical care services reporting requirements)).~~

~~((H)) (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:~~

~~(i) You move;~~

- ~~(ii) The child you are caring for moves out of the home;~~
- ~~(iii) Anyone related to you or to the child you are caring for moves into or out of the home;~~
- ~~(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).~~

~~(v) There is a change in the recipient child's earned or unearned income (see WAC 388-450-0070 for how we count the earned income of a child);~~

~~(vi) The recipient child has liquid resources more than four thousand dollars;~~

~~(vii) A recipient child in the home becomes a foster child; or~~

~~(viii) You legally adopt the recipient child.~~

~~((e) If you receive family medical benefits, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) A family member moves out of your home; or~~
- ~~(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.))~~

~~(2) If you do not receive cash assistance ((from any of the programs listed in subsection (1))), but you do receive Basic Food benefits ((from any of the programs listed in subsection (2))), you must report changes for the people in your assistance unit under chapter 388-408 WAC((, based on all the benefits you receive.~~

~~(a) If you receive Basic Food benefits, you)). You need to tell us if:~~

~~((i) If your)) (a) Your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or~~

~~((ii)) (b) For all other households tell us if your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or~~

~~((iii)) (c) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.~~

~~((b) If you receive children's medical benefits, you need to tell us if:~~

- ~~(i) You move; or~~
- ~~(ii) A family member moves out of the house.~~
- ~~(e) If you receive pregnancy medical benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) You are no longer pregnant.~~

~~(d) If you receive other medical benefits, you need to tell us if:~~

- ~~(i) You move; or~~
- ~~(ii) A family member moves out of the home.))~~

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

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-424-0010 Citizenship and alien status—Eligibility for TANF((, Medicaid, and CHIP)).** (1) To receive temporary assistance for needy families (TANF)((, Medicaid, or children's health insurance program (CHIP) benefits)), an individual must meet all other eligibility

requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien";
- (e) A victim of trafficking; or
- (f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF(~~(, Medicaid, and CHIP)~~).

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF(~~(, Medicaid, or CHIP)~~) for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006(4) are met.

~~(4) ((A lawfully present "nonqualified alien" child or pregnant woman as defined in WAC 388-424-0001 who meet residency requirements as defined in WAC 388-468-0005 may receive Medicaid or CHIP.~~

~~(5))~~ An alien who is ineligible for TANF(~~(, Medicaid or CHIP)~~) because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) (~~and WAC 388-438-0110 (alien medical program)~~); or

(b) State-funded cash (~~(or chemical dependency benefits)~~) as described in WAC 388-424-0015 (state family assistance (SFA), and aged, blind, or disabled (ABD) cash(~~(, and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)~~), and medical benefits as described in WAC 182-503-0532; or

(c) Pregnancy medical benefits for noncitizen women as described in WAC 388-462-0015(3); or

~~(d) State funded apple health for kids as described in WAC 388-505-0210(5)).~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash(~~(, )~~) and PWA(~~(, and ADATSA)~~) programs.** (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); or

(b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001.

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or

(e) A nonqualified alien described in WAC 388-424-0001 who:

- (i) Has verified their intent to stay in the United States indefinitely; and
- (ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-436-0030 How does my eligibility for other possible cash benefits impact my eligibility for CEAP? (1)** You are ineligible for CEAP if you, or a household member, are eligible for any of the following programs:

(a) TANF or SFA, unless the family has had its case grant terminated due to WAC 388-310-1600;

(b) Pregnant women assistance (PWA);

(c) RCA;

(d) Aged, blind, or disabled (ABD) cash;

(e) Supplemental security income (SSI);

~~((f) Medical assistance for those applicants requesting help for a medical need;~~

~~((g))~~ (f) Food assistance for those applicants requesting help for a food need;

~~((h))~~ (g) Housing assistance from any available source for those applicants requesting help for a housing need;

~~((i))~~ (h) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.

(2) The department may require the applicant, or anyone in the assistance unit, to apply for and take any required action to receive benefits from programs described in the above subsection (1)(a) through (h).

(3) The department may not authorize CEAP benefits to any household containing a member who is:

(a) Receiving cash benefits from any of the following programs:

(i) TANF/SFA;

(ii) PWA;

(iii) RCA;

(iv) DCA; or

(v) ABD cash.

(b) Receiving reduced cash benefits for failure to comply with program requirements of TANF/SFA, or RCA.

(4) The department may authorize CEAP to families reapplying for TANF/SFA who are not eligible for TANF cash benefits under WAC 388-310-1600 until they complete the four week participation requirement.

AMENDATORY SECTION (Amending WSR 12-08-002, filed 3/21/12, effective 4/21/12)

**WAC 388-450-0015 What types of income are not used by the department to figure out my benefits?** This section applies to cash assistance(~~(, children's, family, or pregnancy medical,))~~ and basic food benefits.

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

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

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

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

(f) Energy assistance payments;

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

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

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

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

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

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

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

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

(o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

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

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

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

**WAC 388-450-0025 What is unearned income?** This section applies to cash assistance((-)) and food assistance((-)

~~and medical programs for families, children, and pregnant women)).~~

(1) Unearned income is income you get from a source other than employment or self-employment. Some examples of unearned income are:

(a) Railroad retirement;

(b) Unemployment compensation;

(c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or

(e) Veteran Administration benefits.

(2) For food assistance we also count the total amount of cash benefits due to you before any reductions caused by your failure (or the failure of someone in your assistance unit) to perform an action required under a federal, state, or local means-tested public assistance program, such as TANF/SFA, ABD assistance, PWA, and SSI.

(3) When we count your unearned income, we count the amount you get before any taxes are taken out.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-450-0040 Native American benefits and payments.** This section applies to TANF/SFA, RCA, PWA, ABD cash, ~~((medical))~~ and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian ~~((judgement))~~ judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determining a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540; and

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503(~~;~~ and

~~(d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations).~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-450-0156 When am I exempt from deeming?** (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with United States Citizenship and Immigration Services (USCIS):

- (i) Refugee;
- (ii) Parolee;
- (iii) Asylee;
- (iv) Cuban/Haitian entrant; or
- (v) Special immigrant from Iraq or Afghanistan.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, ~~((or))~~ nonemergency medicaid benefits, or Washington Apple Health coverage. We count a quarter of work by the following people toward your forty qualifying quarters:

- (i) Yourself;
- (ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
- (iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If USCIS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

(i) You no longer live with your sponsor; and

(ii) Leaving your sponsor caused your need for benefits.

(2) You are exempt from the deeming process while you are in the same AU as your sponsor(~~;~~

~~(3) For children and pregnancy medical programs, you are exempt from sponsor deeming requirements).~~

~~((4))~~ (3) For Basic Food, you are exempt from deeming while you are under age eighteen.

~~((5))~~ (4) For state family assistance, aged, blind, or disabled (ABD) cash, pregnant women assistance (PWA)(~~;~~) and state-funded Basic Food benefits, ~~((and state-funded medical assistance for legal immigrants))~~ you are exempt from the deeming process if:

(a) Your sponsor signed the affidavit of support more than five years ago;

(b) Your sponsor becomes permanently incapacitated; or

(c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of an honorably discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

~~((6))~~ (5) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

~~((7))~~ (6) If your AU has income at or below one hundred thirty percent of the federal poverty level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption." You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

~~((8))~~ (7) If you use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

(a) The names of the sponsored people in your AU;

(b) That you are exempt from deeming due to your income;

(c) Your sponsor's name; and

(d) The effective date that your twelve-month exemption began.

~~((9))~~ (8) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

~~((10))~~ (9) If you choose not to use the indigence exemption:

(a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or

(b) You will be subject to regular deeming rules under WAC 388-450-0160.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-450-0170 Does the department provide an earned income deduction as an incentive for persons who receive TANF/SFA to work?** This section applies to TANF/SFA, RCA(~~(7)~~) and PWA(~~(7)~~ and medical programs for children, pregnant women, and families except as specified under ~~WAC 388-450-0210~~)).

(1) If a client works, the department only counts some of the income to determine eligibility and benefit level.

(2) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

(3) If you pay for care before we approve your benefits, we subtract the amount you pay for those dependent children or incapacitated adults who get cash assistance with you.

(a) The amount we subtract is:

(i) Prorated according to the date you are eligible for benefits;

(ii) Cannot be more than your gross monthly income; and

(iii) Cannot exceed the following for each dependent child or incapacitated adult:

Dependent Care Maximum Deductions

Hours Worked Per Month	Child Two Years of Age & Under	Child Over Two Years of Age or Incapacitated Adult
0 - 40	\$ 50.00	\$ 43.75
41 - 80	\$ 100.00	\$ 87.50
81 - 120	\$ 150.00	\$ 131.25
121 or More	\$ 200.00	\$ 175.00

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

**WAC 388-472-0005 What are my rights and responsibilities?** For the purposes of this chapter, "we" and "us" refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, a referral to the housing and essential needs(HEN) program, or food (~~(or medical)~~) assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Have us explain the legal use of DSHS benefits to you;

(c) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

(d) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

(e) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two working days from the date we denied your request for expedited services;

(ii) ~~((If you are pregnant and otherwise eligible, you get medical within fifteen working days;~~

~~((iii))~~ Aged, blind, or disabled (ABD) assistance, or ~~((alcohol or drug addiction treatment (ADATSA), or medical assistance))~~ referral to the housing and essential needs (HEN) program, may take up to forty-five days(~~(-and~~

~~(iv) ((iii) Medical assistance requiring a disability decision may take up to sixty days))~~.

(f) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

(g) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

(h) Ask us not to collect child support (~~((or))~~) (which includes medical support, as defined in WAC 388-14A-1020) if you fear the noncustodial parent may harm you, your children, or the children in your care;

(i) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shutoff, if you get TANF;

(j) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

(k) Ask for an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(l) Have interpreter or translator services given to you at no cost and without delay;

(m) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

(n) Get help from us to register to vote.

(2) If you get cash(=) or food(=, or medical) assistance, you are responsible to:

(a) Tell us if you are (~~(pregnant, in need of immediate medical care,)~~) experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

- (i) Shelter costs;
- (ii) Child or dependent care costs;
- (iii) Child support that is legally obligated;
- (iv) Medical expenses; and
- (v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(f) Cooperate in the collection of child support (~~(or medical support)~~) unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

(j) (~~Give your Provider One services card to your medical care provider;~~

~~(k))~~ Cooperate with the quality control review process;

~~((H))~~ (k) Keep track of your EBT card for cash and food assistance and keep your personal identification number (PIN) secure. If you receive multiple replacement EBT cards, this may trigger an investigation to determine if you are trafficking benefits as described under WAC 388-412-0046 (2)(d); and

~~((m))~~ (l) Use your cash and food assistance benefits only as allowed under WAC 388-412-0046.

(3) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you comply with the requirements of this section.

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

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

**AMENDATORY SECTION** (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-473-0010 What are ongoing additional requirements and how do I qualify?** "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

(a) Temporary assistance for needy families (TANF), or tribal TANF;

(b) State family assistance (SFA);

(c) Pregnant women assistance (PWA);

(d) Refugee cash;

(e) Aged, blind, or disabled (ABD) cash assistance; or

(f) Supplemental security income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your cash (~~(or medical)~~) assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

(a) The circumstances that create the need; and

(b) How the need affects your health, safety and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by increasing your monthly cash assistance benefit.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
TANF/RCA	6 Months
ABD	12 Months
SSI	24 Months
All	Any time need or circumstances are expected to change

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

**AMENDATORY SECTION**

**WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits?** (1) Countable income is all income your assistance unit (AU) or your child-only means-testing AU has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170 and 388-450-0175;

(c) For **Basic Food**, deductions allowed under WAC 388-450-0185; and

(d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.

(a) Child-only means-testing applies when you are a nonparental relative or unrelated caregiver applying for or

receiving a nonneedy TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.

(b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.

(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%
Between 201% and 225% of FPL	80%
Between 226% and 250% of FPL	60%
Between 251% and 275% of FPL	40%
Between 276% and 300% of FPL	20%
Over 300% of the FPL	The children in your care are not eligible for a TANF/SFA grant.

(d) If the children in your care qualify for a TANF/SFA grant once the child-only means-test is applied, the child's income is budgeted against the child-only means-tested payment standard amount.

~~((e) If the children in your care do not qualify for a TANF/SFA grant once the child-only means-test is applied, they may still qualify for medical assistance as described in WAC 388-408-0055 and WAC 388-505-0210-))~~

(4) For **cash assistance**:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 or, for child-only means-tested cases, to the payment standard amount in subsection (3) of this section.

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

(5) For **Basic Food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for Basic Food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

**WSR 14-21-002  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-282—Filed October 1, 2014, 2:32 p.m., effective October 1, 2014, 2:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-185.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule was inadvertently omitted from the agency's permanent rule filing for recreational fishing. An emergency rule is needed to require barbless hooks when fishing for salmon. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: October 1, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-18500L Freshwater exceptions to statewide rules—Southwest.** Notwithstanding the provisions of WAC 220-310-185, effective immediately until further notice, barbless hooks are required when fishing for salmon and steelhead in waters of the Tilton River from the mouth to the west fork.

**WSR 14-21-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-283—Filed October 1, 2014, 3:32 p.m., effective October 1, 2014, 3:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To repeal WAC 232-13-05000A, 232-13-07000C, and 232-13-15000B.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-13-05000A, 232-13-07000C, and 232-13-15000B.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.32.470.

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

Reasons for this Finding: The recent changes in weather with forecasted precipitation, lower temperatures and higher humidity levels, have abated high fire hazard conditions for the foreseeable future. As such, previously adopted emergency rules are no longer necessary and should be repealed.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 3.

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

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

Date Adopted: October 1, 2014.

Philip Anderson  
Director

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-13-05000A Operating chainsaws, welding, or operating an acetylene or other torch with open flame.

WAC 232-13-07000C Fires, campfires and smoking.

WAC 232-13-15000B Operating a motor vehicle off developed roadways.

**WSR 14-21-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-284—Filed October 2, 2014, 9:27 a.m., effective October 4, 2014]

Effective Date of Rule: October 4, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000V; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

Reasons for this Finding: The intent of the fishery is removal of excess hatchery fall chinook from the Upper Columbia River Basin while also providing additional angling opportunity. Over eighty thousand chinook primarily from the Hanford Reach fall chinook hatchery programs have returned above Priest Rapids Dam, including over eighteen thousand above Rock Island Dam. In addition, an estimated thirty thousand or more coho are expected to return this year above Priest Rapids Dam and are in excess of spawning escapement and hatchery broodstock needs. Neither popula-

tion is listed under the Endangered Species Act. 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 2, 2014.

Nate Pamplin  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-20000V Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, effective October 4 through November 30, 2014, it is permissible to fish for salmon in waters of the Columbia River from Priest Rapids Dam to 400' below Chief Joseph Dam with the following restrictions:

(1) Daily limit six chinook salmon (marked or unmarked), of which only three may be adult Chinook, and two coho salmon.

(2) Minimum size 12 inches.

(3) Selective gear rules apply (single barbless hooks or flies, knotless nets), except bait is permissible.

(4) Night closure is in effect.

(5) Release all floy (anchor) tagged coho.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2014:

WAC 220-310-20000V Freshwater exceptions to statewide rules—Columbia River.

**WSR 14-21-009  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-285—Filed October 2, 2014, 9:29 a.m., effective October 4, 2014]

Effective Date of Rule: October 4, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500E; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: An estimated thirty thousand or more coho are expected to return this year above Priest Rapids Dam and are in excess of spawning escapement and hatchery broodstock needs. The population is not listed under the Endangered Species Act. Opening the fishery will provide for additional angling 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 2, 2014.

Nate Pamplin  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500E Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective October 4 through November 30, 2014, it is permissible to fish for coho in the waters listed below with the following restrictions:

(1) Wenatchee River – From the mouth to the Wenatchee River at the Icicle River Road Bridge.

(2) Icicle River – From the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(3) Methow River – From the mouth to the confluence with the Chewuch River in Winthrop; fishing from a floating device is prohibited from the second powerline crossing (1 mile upstream from the mouth) to the first Hwy 153 Bridge (4 miles upstream from the mouth).

(4) Daily limit 2 coho salmon, minimum size 12 inches

(5) Selective gear rules are in effect.

(6) Night closure in effect.

(7) Release all floy (anchor) tagged coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2014:

WAC 220-310-19500E Freshwater exceptions to statewide rules—Eastside.

**WSR 14-21-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-281—Filed October 2, 2014, 1:46 p.m., effective October 6, 2014, 6:00 a.m.]

Effective Date of Rule: October 6, 2014, 6:00 a.m.

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 220-32-05100M; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Allows the sale of fish caught during week forty-one of the 2014 treaty commercial gillnet fall season. Maintains the small sanctuary at Spring Creek Hatchery as the broodstock needs are expected to be met. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6. Sales of fish landed in the area downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area is lawfully open for sales under tribal regulations. Similarly, the sale[s] of fish caught in Yakama Nation tributary fisheries are allowed when open under (and consistent with) Yakama Nation regulations. Adult fall chinook remain available to the treaty tribes for harvest based on the inseason forecast of 1,150,000 fish. Steelhead harvest is expected to remain within the guideline based on the inseason forecast of 45,000 Group B fish. The quick reporting rule continues to be modified to require quick reporting within twenty-four hours of completing the fish ticket, which is intended to allow harvest

to be tracked as the season progresses. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on September 18 and October 1, 2014. Conforms state rules with tribal rules. 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 rules for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. 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. 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 2, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 220-32-05100N 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, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake and specific areas of SMCRA 1E. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

**(1) SMCRA 1F, 1G, 1H (Zone 6):**

(a) Season: 6:00 AM October 6 until 6:00 PM October 10, 2014.

(b) Gear: Gillnets only; 8-inch minimum mesh restriction.

(c) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

(d) Standard river mouth and dam sanctuaries applicable to gillnet gear. Spring Creek Hatchery sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

**(2) SMCRA 1F, 1G, 1H (Zone 6):**

(a) Season: Open immediately until further notice.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(c) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

(d) All dam sanctuaries for these gear types are in effect.

**(3) SMCRA 1E.** Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Open immediately until further notice. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

**(4) Columbia River Tributaries upstream of Bonneville Dam:**

(a) Season: Open immediately until further notice, and only during those days and hours when the tributaries listed in subsection (b) of this section are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, Wind River and Klickitat River.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line only, except gill nets may be used in Drano Lake. Mesh restrictions consistent with tribal regulations.

(d) Allowable Sales: Consistent with tribal regulations: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only.

**(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).**

**(6) Sales of fish are permissible after an open period concludes, as long as the fish offered for sale were landed during an open period.**

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. October 6, 2014:

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. (14-273)

**WSR 14-21-019**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 14-278—Filed October 2, 2014, 2:18 p.m., effective October 7, 2014, 12:00 p.m.]

Effective Date of Rule: October 7, 2014, 12:00 p.m.

Purpose: Amend recreational fishing rules for razor clams.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches are 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 2, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-36000P Razor clams—Area 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, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 p.m. October 7 through 11:59 p.m. October 12, 2014, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. October 7 through 11:59 p.m. October 12, 2014, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. October 11 through 11:59 p.m. October 11, 2014, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. Effective 12:01 p.m. October 10 through 11:59 p.m. October 12, 2014, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

5. 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 13, 2014:

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

**WSR 14-21-020  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-286—Filed October 2, 2014, 2:19 p.m., effective October 3, 2014]

Effective Date of Rule: October 3, 2014.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000W; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Increases the daily bag limit for hatchery coho. Up to three adult hatchery coho may be kept. All other permanent regulations apply. Hatchery coho remain available for harvest. Harvest estimates for the seasons are well within ESA limits. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of October 1, 2014. There is insufficient time to adopt permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order

sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

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

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

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: October 2, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-20000W Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, effective October 3 through December 31, 2014, in those waters of the Columbia River from Buoy 10 upstream to the Tongue Point/Rocky Point line, up to 3 hatchery adult coho may be retained as part of the daily limit. All other permanent remain in effect.

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

#### REPEALER

The following section of the Washington Administrative code is repealed effective January 1, 2015:

WAC 220-310-20000W Freshwater exceptions to statewide rules—Columbia River.

#### **WSR 14-21-021 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 14-287—Filed October 2, 2014, 4:05 a.m., effective October 6, 2014, 7:00 a.m.]

Effective Date of Rule: October 6, 2014, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-42800K; and amending WAC 220-47-428.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: There is remaining harvestable surplus of coho available for commercial harvest in Salmon Management and Catch Reporting Area 12A. 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 2, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-47-42800K Beach seine—Open periods.** Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting

Areas except in the area and during the times listed below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
12A	7 AM – 7 PM daily October 6 through October 10

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. October 10, 2014:

WAC 220-47-42800K Beach seine—Open periods.

**WSR 14-21-031**

**EMERGENCY RULES**

**DEPARTMENT OF REVENUE**

[Filed October 6, 2014, 11:48 a.m., effective October 6, 2014, 11:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-61A-202 (REET Rule 202) explains the exemption from real estate excise tax (REET) for inheritance transfers. WAC 458-61A-303 (REET Rule 303) explains the REET affidavit requirements. 2ESHB 1117, effective on June 12, 2014, provides a new REET exemption for transfers pursuant to a transfer on death deed and substantiation requirements to claim that exemption, as well as a change to the affidavit requirements for transfer on death deed transfers. REET Rules 202 and 303 are amended to reflect this new exemption and accompanying substantiation and affidavit requirements for transfers pursuant to transfer on death deeds.

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-202 Inheritance or devise and 458-61A-303 Affidavit.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350.

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: Counties and taxpayers need a process in place for the filing of REET affidavits for transfers pursuant to transfer on death deeds by the June 12, 2014, the effective date of ESHB [2ESHB] 1117. The amendments to REET rules 202 and 303 clarify which exemption a taxpayer must claim, what documents must support that exemption, and when an affidavit must be filed to claim the exemption, and who must sign the affidavit.

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 2, Repealed 0.

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

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

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

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

Date Adopted: October 6, 2014.

Dylan Waits  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

**WAC 458-61A-202 Inheritance or devise.** (1) **Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to

her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviving domestic partner in accordance with a community property agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The transfer of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, and retain a life estate. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, while retaining a life estate, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Transfer on death deeds.** The transfer of real property pursuant to a transfer on death deed to the beneficiary(ies) named in the transfer on death deed occurs upon the death of the transferor and is generally not subject to the real estate excise tax. However, if the transfer of real property pursuant to a transfer on death deed satisfies a contractual obligation of the transferor owed to the beneficiary(ies) designated in the transfer on death deed, real estate excise tax is due on the transfer.

(8) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a trust instrument, a certified copy of the death certificate, and a copy of the trust instrument showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants with rights of survivorship and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order;

(f) **Transfer on death deeds.** If the property is being transferred pursuant to a transfer on death deed, a certified copy of the death certificate is recorded to perfect title.

(g) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through ~~((e))~~ (f) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

**AMENDATORY SECTION** (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

**WAC 458-61A-303 Affidavit.** (1) **Introduction.** This section explains when a real estate excise tax affidavit is required for the transfer of real property. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Affidavit required.** In general, an affidavit must be filed when ownership or title to real property transfers as evidenced by conveyance, deed, grant, assignment, quitclaim, or any other document effectuating the transfer including, but not limited to, the following:

(a) Transfer establishing or separating community property, or in fulfillment of a settlement agreement incident to a dissolution of marriage, legal separation, or declaration of invalidity, or in fulfillment of a community property agreement under RCW 26.16.120;

(b) Transfer resulting from a court order;

(c) Transfer to secure a debt;

(d) Transfer of a taxable easement;

(e) A deed in lieu of foreclosure of a mortgage;

(f) A deed in lieu or declaration of forfeiture of a real estate contract;

(g) Transfer to an heir in the settlement of an estate;

(h) Transfer to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) Transfer of development rights, water rights, or air rights;

(j) Transfer of leasehold improvements;

(k) Boundary line adjustments; ~~((e))~~

(l) Rerecording a document to correct a minor error, such as the legal description or spelling of a name; or

**(m) Transfer pursuant to a previously recorded transfer on death deed when the beneficiary(ies) perfect title by presenting a certified copy of the transferor's death certificate.**

(3) **Affidavit not required.** The real estate excise tax affidavit is not required nor accepted for the following transactions including, but not limited to:

(a) Transfer of cemetery lots or graves;

(b) Transfer for assignment or release of security, stated on the face of the instrument:

(i) To secure or assign a debt; or

(ii) To provide or release collateral;

(c) A lease of real property that does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust, satisfaction of mortgage, or reconveyance of a deed of trust;

(e) A seller's assignment of deed and contract;

(f) A fulfillment deed pursuant to a real estate contract;

(g) A community property agreement under RCW 26.16.120;

(h) Purchase of an option; ((~~or~~))

(i) An earnest money agreement; or

(j) The recording of a transfer on death deed.

**(4) Examples.**

(a) Lionel Construction has developed a group of new homes. It deeds a street to the homeowners' association upon completion of the development. This is done to clear title, which is an exempt transaction. The affidavit should cite the appropriate exemption rule, describe the exemption as "clearing title for street for homeowners' association," and have attached all department-required documentation.

(b) Webb Corporation transfers its interest in a parcel of real property to its wholly owned subsidiary, Watson Company. This is an exempt transaction because there is no change in beneficial ownership of the property. The affidavit must cite the appropriate exemption rule, describe the exemption as "transfer to wholly owned subsidiary; no change in beneficial ownership," and have attached all documentation required by the department.

(5) **Multiple buyers.** When the transfer of property is to two or more buyers, the affidavit must clearly state the relationship between them as joint tenants, tenants in common, partners, etc., and identify the form and proportion of interest each is acquiring.

**(6) Affidavit must be complete.**

(a) Taxpayers must provide complete and accurate information on the affidavit, as well as all documentation required by the department for claimed tax exemptions. Incomplete affidavits will not be accepted.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person. In the case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

(7) **Documentation required when claiming an exemption.** Claims of exemption from the real estate excise tax must be specific and include the following:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for the exemption, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption, as well as a brief description of the exemption.

(8) **Completion of affidavit.** The department will provide a real estate excise tax affidavit to be completed by the taxpayer and filed with the agent of the county where the property is located. Affidavits will be furnished by the department to the county agents and accessible to the public in one or more formats to be determined by the department. Alternative forms may be used, as long as they are in a format accepted by the department.

In most instances, the affidavit must be signed by the seller or the seller's agent and the buyer or the buyer's agent, under oath, certifying that all information on the affidavit is

complete and correct. However, an affidavit given in connection with the grant of an easement or right of way to a utility company, public utility district or cooperative, or a governmental entity needs to be signed only on behalf of the entity purchasing the utility right of way or easement. In addition, an affidavit given in connection with the transfer of real property pursuant to a transfer on death deed need only be signed on behalf of the transferor by the designated beneficiary(ies) named in the transfer on death deed.

(9) **Duplicate affidavits.** To accommodate the requirement that the affidavit be signed by both the seller and buyer, or agents of each, identical affidavits may be submitted for a single transaction, one bearing the seller's or seller's agent's signature and one bearing the buyer's or buyer's agent's signature. Both affidavits must be complete and have identical information. The county agent will receipt one of the affidavits and attach the other affidavit to the receipted affidavit.

(10) **Retention of records.** The taxpayer must retain all records pertaining to the transaction for a period of at least four years from the date of sale.

**WSR 14-21-032**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed October 6, 2014, 11:50 a.m., effective October 10, 2014]

Effective Date of Rule: October 10, 2014.

Purpose: The department is filing an extension to emergency rule WSR 14-13-050 which is expiring on October 10, 2014. The prudent parenting legislation, ESB [ESSB] 6479, allows foster children placed with caregivers in foster homes and facilities to participate in normal childhood activities based on a reasonable and prudent parent standard. The department will allow caregivers to approve in-state overnight travel for less than seventy-two hours (including travel to bordering counties in Idaho and Oregon) and a child's participation in routine activities, without permission from the social worker.

The division of licensed resources (DLR) filed a CR-102 for the permanent adoption of these rules with the DSHS rules and policy assistance unit on August 20, 2014. A public hearing will be held on October 21, 2014. Notices for the public hearing went out to foster parents, providers and interested stakeholders on September 16, 2014. Following the public hearing, these rules will be reviewed by the DSHS secretary. DLR anticipates an effective date prior to the end of 2014.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-148-0455 and 388-148-0550.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031.

Other Authority: ESB [ESSB] 6479.

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: Washington enacted a law providing caregivers authority to allow children placed in their care to participate in normal childhood activities based on a reasonable and prudent parent standard. The reasonable and prudent parent standard means the standard of care used by a caregiver in determining whether to allow a child in their care to participate in extracurricular, enrichment, and social activities, without social worker approval. This standard is characterized by careful and thoughtful parental decision making that is intended to maintain a child's health, safety, and best interest while encouraging the child's emotional and developmental growth.

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

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

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

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

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

Date Adopted: September 29, 2014.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

**WAC 388-148-0455 Do I need permission to travel on an overnight trip or out-of-state with my foster child?** You do not need permission to travel in-state with a foster child for a period of time less than seventy-two hours. (Travel to bordering counties in Idaho and Oregon is also considered in-state travel.) Contact the child's ~~((social))~~ DCFS worker with the agency having legal custody of the child for written permission prior to ~~((overnight trips,))~~ out-of-state, or out-of-country travel, or in-state travel over seventy-two hours.

**AMENDATORY SECTION** (Amending WSR 01-18-037, filed 8/28/01, effective 9/28/01)

**WAC 388-148-0550 May my foster children participate in routine activities without a licensed provider supervising the activity?** ~~((Contact the child's social))~~ You do not need DCFS worker ((for prior)) approval for your foster child's participation in routine activities without a licensed provider supervising the activity, such as clubs, social outings with classmates or friends. You may approve normal childhood activities using a reasonable and prudent parenting standard. Overnight stays over seventy-two hours requires DCFS worker approval. Any activities requiring travel must comply with WAC 388-148-0455.

~~((Note: The social worker with the agency having legal custody of the child is the contact person.))~~

**WSR 14-21-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-292—Filed October 7, 2014, 9:40 a.m., effective October 7, 2014, 9:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000J; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The current flow level in the Dungeness River is well below the mean flow for early October. This lack of flow leaves Dungeness chinook salmon, an Endangered Species Act listed stock within the Puget Sound ESU, particularly susceptible to disturbance as their spawning activities conclude, necessitating closing a portion of the river to fishing. The department anticipates that rainfall sufficient to recharge the system and draw coho into the river will occur by October 16. However, if projected rainfall is not sufficient to recharge the system, the closure may be extended until sufficient flow levels are reached. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, 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 7, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 220-310-19000J Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective October 8 through October 15, 2014, the waters of the Dungeness River from the mouth upstream to the hatchery intake pipe at river mile 11.3 are closed to fishing. All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative code is repealed effective October 16, 2014:

WAC 220-310-19000J Freshwater exceptions to statewide rules—Puget Sound.

**WSR 14-21-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-293—Filed October 7, 2014, 4:41 p.m., effective October 8, 2014]

Effective Date of Rule: October 8, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619 [220-310-200].

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

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

Reasons for this Finding: Steelhead fisheries for hatchery steelhead (adipose clip only) have opened in the upper Columbia and tributaries, thus allowing early retention of adipose fin clip only steelhead in the Hanford Reach. Hatchery-origin steelhead in excess of desired escapement are forecast to return to the upper Columbia River. The fishery enhancements in the Hanford Reach will reduce the number of excess hatchery-origin steelhead and consequently increase the proportion of natural-origin steelhead 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 0.

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

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

Date Adopted: October 7, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-310-20000X Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective October 8 through October 31, 2014, in the Columbia River from the Highway 395 Bridge in Pasco to the Old Hanford townsite wooden powerline towers:

(a) Daily limit of any 2 hatchery steelhead.

(b) Anglers may fish with two poles if they possess a valid two-pole endorsement.

(2) Effective October 8 through October 22, 2014, in the Columbia River from the Old Hanford townsite wooden powerline towers to Vernita Bridge:

(a) Daily limit of any 2 hatchery steelhead with mandatory retention required. All fishing for steelhead must cease for the day after retaining the daily limit.

(b) Selective gear rules in effect, except that bait may be used to fish for steelhead.

(3) Effective October 8 through October 22, 2014, and November 27, 2014, until further notice in the Columbia River from the Vernita Bridge to Priest Rapids Dam:

(a) Daily limit of any 2 hatchery steelhead with mandatory retention required. All fishing for steelhead must cease for the day after retaining the daily limit.

(b) Selective gear rules in effect, except that bait may be used to fish for steelhead.

**WSR 14-21-053**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-295—Filed October 7, 2014, 4:41 p.m., effective October 8, 2014]

Effective Date of Rule: October 8, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-200 and 220-310-195.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Hatchery-origin steelhead in excess of desired escapement are forecast to return to the upper Columbia River. The fishery will reduce the number of excess hatchery-origin steelhead and consequently increase the proportion of natural-origin steelhead on the spawning grounds. Allowing retention of hatchery steelhead will provide for additional angling 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 2, Amended 0, Repealed 0.

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

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

Date Adopted: October 7, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-2000Y Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, effective October 8, 2014, until further notice, it is permissible to fish for steelhead in the Columbia River from Rock Island Dam to 400 feet below Chief Joseph Dam with the following restrictions:

(1) Mandatory retention of adipose fin clipped steelhead, daily limit two (2) hatchery steelhead, 20 inch minimum size. Hatchery steelhead are identified by a missing adipose fin with a healed scar in its location.

(2) Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(3) Night closure and selective gear rules remain in effect, except bait is permissible.

(4) Release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin.

#### NEW SECTION

**WAC 220-310-19500F Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, the following provisions are in effect one hour before official sunrise on October 8, 2014, until fur-

ther notice. Unless otherwise amended, all permanent rules remain in effect:

(1) Mandatory retention of adipose fin clipped steelhead, daily limit two (2) hatchery steelhead, 20 inch minimum size. Hatchery steelhead are identified by a missing adipose fin with a healed scar in its location.

(2) Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(3) Night closure and selective gear rules remain in effect.

(4) Release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin.

(a) It is permissible to fish for steelhead in the Wenatchee River from the mouth to the Wenatchee River at the Icicle Road Bridge, including the Icicle River from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(b) It is permissible to fish for steelhead in the Entiat River from the mouth to a 1/2 mile upstream to a point perpendicular with the intersection of the Entiat River Road and Hedding Street.

(c) It is permissible to fish for steelhead in the the Methow River from the mouth to the confluence with the Chewuch River in Winthrop. Fishing from a floating device is prohibited from the second powerline crossing (1 mile upstream from the mouth) to the first Hwy 153 Bridge (4 miles upstream from the mouth).

(d) It is permissible to fish for steelhead in the Okanogan River from the mouth upstream to the Highway 97 Bridge in Oroville.

(e) Effective November 1, 2014, it is permissible to fish for steelhead in the Similkameen River from the mouth upstream to 400 feet below Enloe Dam.

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

**WSR 14-21-054  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-294—Filed October 7, 2014, 4:50 p.m., effective October 9, 2014, 10:00 p.m.]

Effective Date of Rule: October 9, 2014, 10:00 p.m.

Purpose: Amend Puget Sound commercial smelt rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-49-05600A; and amending WAC 220-49-056.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

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

Reasons for this Finding: The fish and wildlife commission have [has] taken action to implement a sixty thousand pound annual quota for the Puget Sound smelt commercial fishery. This emergency rule closes Puget Sound to commercial smelt fishing, as the annual quota is expected to be reached. 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 7, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-49-05600A Puget Sound smelt commercial fishery—Seasons.** Notwithstanding the provisions of WAC 220-49-056, effective 10:00 p.m. October 9, 2014, through December 31, 2014, it is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2015:

WAC 220-49-05600A Puget Sound smelt commercial fishery—Seasons.

**WSR 14-21-057**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 14-296—Filed October 8, 2014, 12:51 p.m., effective October 8, 2014, 12:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Change the hunt dates for Chiliwist archery, quality deer hunt 1064 in GMU 239 and Alta muzzleloader, quality deer hunt 1077 in GMU 242 for existing permit holders.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-359.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to make adjustments to 2014 deer special permit seasons due to an inadvertent overlap in season dates. The overlaps were created when making rules to address the Carleton Fire Complex in north central Washington. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 8, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-35900G 2014 Deer special permits.** Notwithstanding the provisions of WAC 232-28-359, effective immediately until further notice, the following 2014 Deer Special Permits are amended to read as provided below. Unless otherwise amended, all permanent provisions of WAC 232-28-359 remain in effect.

Quality						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Chiliwist	Archery	Any	Nov. 21-30* and Dec. 1-14	Any Buck	GMU 239	15

Quality						
Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Alta	Muzzleloader	Any	Nov. 25-30* and Dec. 1-14	Any Buck	GMU 242	20

\* Must wear hunter orange for November hunt.

**WSR 14-21-059  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-297—Filed October 8, 2014, 3:50 p.m., effective October 8, 2014, 6:01 p.m.]

Effective Date of Rule: October 8, 2014, 6:01 p.m.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule 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 220-33-01000E; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Sets additional mainstem commercial salmon seasons in SMCRA 1D and 1E for chinook-directed fisheries and in SMCRA 1A-1C for coho-directed fisheries, either with tanglenets or traditional six-inch gear. Harvestable chinook and coho remain available based on the current runsizes and allocated ESA impacts. This rule also continues to extend the open hours of individual fishing periods in Deep River and Blind Slough/Knappe Slough and keeps the Blind Slough/Knappe Slough and Tongue Point/South Channel select areas open for an additional day each week. Harvest estimates are well within ESA limits for non-Indian fisheries. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall chinook allocation agreement. The rule is consistent with compact action of July 29, September 18, and October 8, 2014. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River

compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: October 8, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

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

**(1) Mainstem Columbia River - Chinook directed**

(a) SEASON: Sunday, Tuesday, and Thursday nights immediately through October 24, 2014. Open hours are 7 PM to 7 AM.

(b) AREA: SMCRA 1D and 1E. The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

(c) SANCTUARIES: Washougal and Sandy Rivers.

(d) GEAR: Drift gillnets only; 8-inch minimum mesh size.

(e) ALLOWABLE POSSESSION: Chinook, coho, pink and sockeye salmon and shad.

**(2) Mainstem Columbia River - Coho-directed**

(a) SEASON: Open October 9, 10, 15, 16, 17, 22, 23, and 24, 2014. Open hours are 7 AM to 7 PM.

(b) AREA: SMCRA 1A, 1B and 1C. The deadline at the upper end of SMCRA 1C is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

(c) SANCTUARIES: Elokomin-A, Cowlitz, Kalama-A and Lewis-A.

(d) GEAR: Drift gillnets only. 6-inch maximum mesh size restriction. Unslackened floater nets only. Nets legal for the coho tanglenet fishery are considered legal nets for the purposes of this regulation.

(e) ALLOWABLE POSSESSION: Salmon and shad, except no chum salmon

**(3) Mainstem Columbia River - Coho-directed mark selective**

(a) SEASON: Open 7 AM to 7 PM on October 13, 14, 20 and 21, 2014.

(b) AREA: SMCRA 1A, 1B and 1C. The deadline at the upper end of SMCRA 1C is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

(c) SANCTUARIES: Elokomin-A, Cowlitz, Kalama-A and Lewis-A.

(d) GEAR: Maximum mesh size is 3-3/4 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms.

(i) A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(ii) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net

vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(iii) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

(e) ALLOWABLE POSSESSION: Salmon and shad, except all coho salmon must be adipose fin clipped and chum salmon may not be possessed or sold.

(f) ADDITIONAL REGULATIONS: Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: Net length, use of recovery boxes, limited soak times, red corks, and tangle-net certification.

(i) Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 30 minutes.

(ii) Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(iii) Observer program: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

(iv) Live Capture workshop: Licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

**(3) Deep River Select Area**

(a) SEASON: Open Monday, Tuesday, Wednesday and Thursday nights immediately through October 17, 2014, and Monday night, October 20, and Thursday night, October 23, 2014. Open hours are 6 PM to 9 AM.

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

(c) GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. Net length: 100 fathoms maximum. 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. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of

tide or the water level. This emergency provision supersedes the permanent rule and all other rules that conflict with it.

**(4) Tongue Point/South Channel Select Area.**

(a) SEASON: Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 31, 2014. Open hours are 4 PM to 10 AM.

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

(c) GEAR: Gillnet; 6-inch maximum mesh. Net length: 250 fathoms maximum.

(i) Tongue Point fishing area: Weight must not exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

(ii) South Channel area: No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is permissible.

**(5) Blind Slough/Knappa Slough Select Area.**

(a) SEASON: Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 31, 2014. Open hours are 6 PM to 10 AM.

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

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

**(6) Allowable possession for Select Areas:** Salmon and shad, except no chum salmon.

**(7) Additional requirements for all sections:**

(a) Nets that are not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

(b) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required

(c) 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240. Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

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

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. October 8, 2014:

WAC 220-33-01000E Columbia River season below Bon-neville. (14-272)

**WSR 14-21-060**

**EMERGENCY RULES**

**STATE BOARD OF HEALTH**

[Filed October 9, 2014, 8:00 a.m., effective October 9, 2014, 8:00 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-282-005, amending the rule to reference the 2013 version of the National Shellfish Sanitation Program (NSSP) Guide. The United States Food and Drug Administration (FDA) requires all shellfish-producing states to follow the most current version of the NSSP, Guide for the Control of Molluscan Shellfish in order to place molluscan shellfish into interstate commerce. The rule currently references the 2011 NSSP Guide, leaving the current rules out-of-date.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards.

Statutory Authority for Adoption: RCW 69.30.030.

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 Administrative Procedure Act, RCW 34.05.350, allows the department to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) 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;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012, or 2013 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.

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

The FDA published the 2013 NSSP Guide on September 30, 2014. This guide includes license requirements for growing, harvesting, processing, and shipping molluscan shellfish in a way that is safe for human consumption. The FDA requires states to regulate these activities consistent with the NSSP Guide in order for licensees to place molluscan shellfish into interstate commerce.

The state must ensure that our requirements immediately align with the 2013 NSSP Guide in order to protect public

health and prevent disease, and for FDA to allow interstate commerce of molluscan shellfish from Washington state. The short time frame between the publication of the 2013 version of the NSSP by the FDA and the required implementation of the NSSP requirements by the state does not allow use of the regular rule-making process. Therefore, an emergency rule is necessary in order for the state to remain consistent with the requirements of the FDA.

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

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

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

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

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

Date Adopted: October 8, 2014.

Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 14-09-003, filed 4/3/14, effective 5/4/14)

**WAC 246-282-005 Minimum performance standards.** (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish (~~((2014))~~ 2013) (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

**WSR 14-21-062**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Operations Support and Services Division)

(Background Check Central Unit)

[Filed October 9, 2014, 10:32 a.m., effective October 10, 2014]

Effective Date of Rule: October 10, 2014.

Purpose: The background check central unit is amending WAC 388-06-0620 related to DSHS employee background check requirements. This rule making is being filed on behalf of human resources division to comply with sections 1 and 2, chapter 88, Laws of 2014 (SSB 6095).

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0620.

Statutory Authority for Adoption: Chapter 88, Laws of 2014, RCW 43.43.832.

Other Authority: RCW 43.20A.710.

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: An extension of the emergency rule revisions are necessary to comply with RCW 43.43.842 and 43.20A.710 which were amended by the legislature during the 2014 session prohibiting the department from disqualifying individuals who were previously approved for unsupervised access to vulnerable people through the 2002 background assessment review team process. A CR-101 for permanent rule making was filed under WSR 14-13-065. The human resources division is finalizing the permanent rule draft and anticipates filing the CR-102 and proposed rule by November 2014.

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

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

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

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

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

Date Adopted: September 23, 2014.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-03-003, filed 1/8/09, effective 2/8/09)

**WAC 388-06-0620 What information is considered in a background check conducted by DSHS and what are the results of the background check used for?** (1) The background check information considered by the DSHS secretary will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(3) If the applicant or employee's criminal history was reviewed in 2002 by DSHS through its background assessment review team (BART) process, and if DSHS determined the employee could remain in a covered position, the applicant or employee will not be disqualified based upon criminal history, including his or her conviction record, that was known and considered during the BART process.

(4) Background information that was the subject of a pardon, annulment, or other equivalent procedure will not disqualify an applicant and/or employee from having unsupervised access to vulnerable adults, juveniles and children.

**WSR 14-21-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-290—Filed October 10, 2014, 11:39 a.m., effective October 18, 2014]

Effective Date of Rule: October 18, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000H; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: The Washington department of fish and wildlife will increase winter recreational opportunity in inland waters throughout the Puget Sound region by stocking more than three hundred thousand catchable size (ten to twelve inches) or larger rainbow trout. Changes to rules are needed to provide for the additional opportunity enabled by the stocking. 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 10, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-310-19000H Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective one hour before official sunrise on October 18, 2014, to one hour after official sunset on October 31, 2014, in waters of Langlois Lake and Walker Lake (King Co.).

(1) Daily limit of 10 trout.

(2) No size restrictions apply.

REPEALER

The following section of the Washington Administrative code is repealed effective November 1, 2014:

WAC 220-310-19000H Freshwater exceptions to statewide rules—Puget Sound.

**WSR 14-21-071**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-298—Filed October 10, 2014, 11:53 a.m., effective October 13, 2014, 6:00 a.m.]

Effective Date of Rule: October 13, 2014, 6:00 a.m.

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 220-32-05100N; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No.

2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Allows the sale of fish caught during week 42 of the 2014 treaty commercial gillnet fall season. Maintains the small sanctuary at Spring Creek Hatchery as the broodstock needs have been met. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6. Sales of fish landed in the area downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area is lawfully open for sales under tribal regulations. Similarly, the sale[s] of fish caught in Yakama Nation tributary fisheries are allowed when open under (and consistent with) Yakama Nation regulations. Adult fall chinook remain available to the treaty tribes for harvest based on the inseason forecast of 1,150,000 fish. Steelhead harvest is expected to remain within the guideline based on the inseason forecast of 45,000 Group B fish. The quick reporting rule continues to be modified to require quick reporting within twenty-four hours of completing the fish ticket, which is intended to allow harvest to be tracked as the season progresses. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on September 18 and October 8, 2014. Conforms state rules with tribal rules.

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 rules for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. 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. 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 10, 2014.

Nate Pamplin  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake and specific areas of SMCRA 1E. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: 6:00 AM October 13 until 6:00 PM October 16, 2014.

(b) Gear: Gillnets only; 8-inch minimum mesh restriction.

(c) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

(d) Standard river mouth and dam sanctuaries applicable to gillnet gear. Spring Creek Hatchery sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

(2) SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: Open immediately until further notice.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(c) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon

between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

(d) All dam sanctuaries for these gear types are in effect.

(3) SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Open immediately until further notice. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(4) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Open immediately until further notice, and only during those days and hours when the tributaries listed in subsection (b) of this section are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, Wind River and Klickitat River.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line only, except gill nets may be used in Drano Lake. Mesh restrictions consistent with tribal regulations.

(d) Allowable Sales: Consistent with tribal regulations: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Sales of fish are permissible after an open period concludes, as long as the fish offered for sale were landed during an open period.

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. October 13, 2014:

WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam. (14-281)

### **WSR 14-21-072 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 14-289—Filed October 10, 2014, 12:06 p.m., effective October 18, 2014]

Effective Date of Rule: October 18, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-310-18000H; and amending WAC 220-310-190 [220-310-180].

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: The Washington department of fish and wildlife will increase winter recreational opportunity in inland waters throughout the Puget Sound region by stocking more than three hundred thousand catchable size (ten to twelve inches) or larger rainbow trout. Changes to rules are needed to provide for the additional opportunity enabled by the stocking. 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 10, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-310-18000H Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-310-180, effective one hour before official sunrise on October 18 to one hour after official sunset on November 30, 2014, in the waters of Ines Lake and Bowers Lake (Grays Harbor Co.):

- (1) Daily limit of 10 trout.
- (2) No size restrictions apply.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2014:

WAC 220-310-18000H Freshwater exceptions to statewide rules—Coastal.

**WSR 14-21-087  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-300—Filed October 13, 2014, 1:39 p.m., effective October 15, 2014, 7:00 p.m.]

Effective Date of Rule: October 15, 2014, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000M and 220-52-04600B; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule closes Regions 2-east and 2-west. The state will have reached its initial allocation in these regions on October 15, 2014. All remaining commercial harvest areas in Puget Sound will remain open as sufficient allocation is available in these additional commercial regions to remain open. This emergency rule conforms with agreed management plans with applicable tribes, entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 13, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-52-04000N Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040:

(1) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(2) Effective 7:00 p.m. October 15, 2014, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 1. This region includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

(3) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

NEW SECTION

**WAC 220-52-04600B Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and

east of a line from the south end of the Double Bluff State Park seawall.

(e) (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(f) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(g) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(h) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) The following areas are closed to commercial crab fishing:

(a) Effective at 7:00 p.m., Wednesday, October 15, 2014, until further notice, Crab Management Regions 2-east and 2-west. Region 2-east includes Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E. Region 2-west includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and 26A-W.

(b) Effective immediately, until further notice, that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(c) Effective immediately, until further notice, that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(d) Effective immediately, until further notice, those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

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

#### REPEALER

The following section[s] of the Washington Administrative code is [are] repealed effective 7:00 p.m. October 15, 2014:

WAC 220-52-04000M Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts (14-276)

WAC 220-52-04600A Puget Sound crab fishery—Seasons and areas (14-276)

#### **WSR 14-21-088 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 12-288—Filed October 13, 2014, 3:32 p.m., effective October 18, 2014]

Effective Date of Rule: October 18, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000G; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: The Washington department of fish and wildlife will increase winter recreational opportunity in inland waters throughout the Puget Sound region by stocking more than three hundred thousand catchable-size (ten to twelve inches) or larger rainbow trout. Changes to rules are needed to provide for the additional opportunity enabled by the stocking. 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, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19000G Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-195, effective immediately until further notice, it is permissible to fish for and possess game fish

taken from the waters of Rattlesnake Lake for personal use one hour before official sunrise on October 18, 2014, to one hour after official sunset on February 1, 2015.

- (1) Daily limit of 10 trout; no size restrictions.
- (2) Selective gear rules apply.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective February 2, 2015:

WAC 220-310-19000G Freshwater exceptions to statewide rules—Puget Sound.

**WSR 14-21-095  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-301—Filed October 14, 2014, 6:00 p.m., effective October 15, 2014]

Effective Date of Rule: October 15, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-310-19000F.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Egg-take goals have been met at the Nisqually River Hatchery allowing the river to reopen for the retention of chinook salmon while also providing angling 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 0, Amended 0, Repealed 1.

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

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

Date Adopted: October 14, 2014.

Philip Anderson  
Director

#### REPEALER

The following section of the Washington Administrative Code is repealed effective October 15, 2014:

WAC 220-310-19000F Freshwater exceptions to statewide rules—Puget Sound. (14-269)

**WSR 14-21-097  
EMERGENCY RULES  
BUILDING CODE COUNCIL**

[Filed October 14, 2014, 6:11 p.m., effective October 14, 2014, 6:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule will modify chapter 51-51 WAC to allow installation of photovoltaic (PV) panels and modules on residential rooftops without the need for an engineering report. Under the current rules, some jurisdictions require very costly engineering reports in order to issue a permit for installation of these systems. This rule would provide more efficient and cost-effective installation of PV systems on residential rooftops. The purpose of this filing is to renew the emergency rule originally filed on June 19, 2014, under WSR 14-14-003. This matter was filed for permanent rule making as of July 28, 2014, under WSR 14-16-042.

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

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

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 current code language serves as a barrier to the growth of the residential PV installation business in Washington state. Currently many jurisdictions require costly engineering reports which delay permit approvals and result in additional fees. Under these circumstances some potential customers choose not to purchase and install the systems; some installers avoid doing business in some parts of the state due to extremely limiting regulations. Relaxing this requirement would provide additional capacity and allow the industry to continue to thrive in Washington state. This filing will renew the emergency rule originally filed under WSR 14-14-003. The matter is currently filed for permanent rule making under WSR 14-16-042.

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

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings: The council adopted the 2012 edition of the International Residential Code (IRC) effective July 1, 2013, with

certain amendments. This code regulates the construction methods of single-family and two family (duplex) homes and townhouses. At the time of adoption, no amendments were made to Section M2302 – Photovoltaic Solar Energy Systems. It has now come to the attention of the council that this code section should be amended due to the potential for extremely negative economic impacts on the solar PV industry throughout Washington state.

In terms of permit requirements, some local jurisdictions choose to exempt certain rooftop PV systems from building permit requirements, and/or may require only a simple over-the-counter permit. Other jurisdictions require full engineering reports and stamped drawings for all rooftop PV systems; this may add long wait times for project completion – up to eight weeks - and result in significant expenses for the homeowner, estimated at an additional \$500 to \$2,500 for engineering-related expenses alone. As a result, some homeowners choose not to install the systems at all, given these additional expenses and long wait times for completion.

The industry provides an increasing number of jobs in construction, installation, and manufacturing every year. However, under the conditions cited above, some companies avoid doing business in areas of the state where the permit requirements serve as an impediment to business efficiency, even though there are potential projects available in those areas.

This emergency was brought to the attention of the council from the WSU energy program, in collaboration with the solar industry and a group of local code officials to address the need for a code amendment, to be adopted as soon as possible. The proposed emergency rule is estimated to result in a ten to thirty percent increase in annual sales for the majority of solar installers. In some cases, the increase is likely to be twice that large, as solar contractors in eastern Washington would increase marketing efforts in areas they currently avoid.

The proposed emergency rule would provide exceptions to the roof covering specifications in Section M2302, such that the installation could be shown to meet certain standard requirements. These would include information on rating and listing of test standards for wind speed, maximum snow load specifications, specific dead load limits per square foot, requirements on the specific height of the installation above the roof, and the method of distribution of the dead load so that no excessive weight rests on any area of the roof. By allowing for these exceptions, no engineering reports would be required, and local jurisdictions would not need to require permits for most standard installations. This would result in increased business throughout the state and allow the solar PV industry to continue to thrive and grow.

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

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

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

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

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

Date Adopted: June 13, 2014.

C. Ray Allshouse  
Chair

#### NEW SECTION

#### **WAC 51-51-2300 Section M2302—Photovoltaic solar energy systems.**

**M2302.2 Requirements.** The installation, inspection, maintenance, repair and replacement of photovoltaic systems and all system components shall comply with the manufacturer's instructions, sections M2302.2.1 through M2302.2.3, NFPA 70, and the IFC as amended by Washington state.

**M2302.2.1 Roof-mounted panels and modules.** Where photovoltaic panels and modules are installed on roofs, the roof shall be constructed to support the loads imposed by such modules.

**EXCEPTION:** The roof structure shall be deemed adequate to support the load of the rooftop solar photovoltaic system if all of the following requirements are met:

1. The solar photovoltaic panel system shall be designed for the wind speed of the local area, and shall be installed per the manufacturer's specifications.
2. The ground snow load does not exceed 70 pounds per square foot.
3. The total dead load of modules, supports, mountings, raceways, and all other appurtenances weigh no more than four pounds per square foot.
4. Photovoltaic modules are not mounted higher than 18 inches above the surface of the roofing to which they are affixed.
5. Supports for solar modules are to be installed to spread the dead load across as many roof-framing members as needed, so that no point load exceeds 50 pounds.

Roof-mounted photovoltaic panels and modules that serve as roof covering shall conform to the requirements for roof coverings in Chapter 9. Where mounted on or above the roof coverings, the photovoltaic panels and modules and supporting structure shall be constructed of noncombustible materials or fire-retardant treated wood equivalent to that required for the roof construction.

#### **WSR 14-21-098**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed October 15, 2014, 7:52 a.m., effective October 15, 2014, 7:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In the interest of protecting the swine industry in Washington state of [from] the rapidly spreading porcine epidemic diarrhea virus (PEDv), an additional requirement is

being put on all swine imported into Washington. All certificate of veterinary inspections must contain a certification that the swine being imported have not originated from a premises known to be affected by PEDv and have not been exposed to PEDv in the last thirty days.

Citation of Existing Rules Affected by this Order: Amending WAC 16-54-111.

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: Chapter 34.05 RCW.

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

Reasons for this Finding: PEDv was first diagnosed in the United States in May 2013. Since then it has spread to twenty-four states and has killed as [an] estimated four - seven million suckling piglets. The source of entry into the United States at this point is undetermined and the virus appears to spread by a range of methods; not just the live animal imports. To protect the swine industry in the state of Washington the requirement is imperative as swine producers are importing more swine now due to upcoming fair seasons and shows.

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

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

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

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

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

Date Adopted: October 15, 2014.

Mark Streuli  
Deputy Director

**AMENDATORY SECTION** (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

**WAC 16-54-111 Swine—Importation and testing requirements. Import health requirements.**

(1) All swine entering Washington state must be accompanied by an entry permit, a certificate of veterinary inspection, and official USDA approved identification. The certificate of veterinary inspection must contain the following certification: "To the best of my knowledge, swine represented on this certificate have not originated from a premises known to be affected by Porcine Epidemic Diarrhea virus (PEDv), and have not been exposed to PEDv within the last 30 days." The certification must be signed by both the owner of the swine and the certifying veterinarian.

(2) Feral swine are prohibited in Washington state.

**Import test requirements.**

(3) **Brucellosis.** All intact male and intact female swine more than six months of age must be tested negative for brucellosis within thirty days before entering Washington state or must originate from a USDA validated brucellosis free herd or state (Swine Brucellosis Control/Eradication State-Federal-Industry Uniform Methods and Rules, April, 1998).

(4) **Pseudorabies.** No test is required from states recognized as Stage IV or Stage V by Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003.

(5) A negative pseudorabies test within thirty days before entry is required for swine from any state or area that loses Stage IV or Stage V status.

**Exemptions to import test requirements.**

(6) Swine shipped directly to a federally inspected slaughter plant for immediate slaughter are exempt from testing requirements.

**Swine semen and embryos.**

(7)(a) Swine semen and swine embryos entering Washington state for insemination of swine or implantation into swine shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies serologic test within thirty days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within thirty days prior to the collection of the semen or embryos.

(b) Brucellosis testing is not required on donor swine from brucellosis validated free states.

(c) Pseudorabies testing is not required on donor swine from pseudorabies Stage IV or Stage V states.

**WSR 14-21-107**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 14-302—Filed October 15, 2014, 4:50 p.m., effective October 15, 2014, 7:00 p.m.]

Effective Date of Rule: October 15, 2014, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000N, 220-52-04600A and 220-52-04600B; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule closes regions 2-east and 2-west. The state will have reached its ini-

tial allocation in these Regions on October 15, 2014. All remaining commercial harvest areas in Puget Sound will remain open as sufficient allocation is available in these additional commercial regions to remain open. This emergency rule conforms with agreed management plans with applicable tribes, entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 3.

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

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

Date Adopted: October 15, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-04000P Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040:

(1) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(2) Effective 7:00 p.m. October 15, 2014, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 1. This region includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

(3) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

#### NEW SECTION

**WAC 220-52-04600C Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) The following areas are closed to commercial crab fishing:

(a) Effective at 7:00 p.m., Wednesday, October 15, 2014, until further notice, Crab Management Regions 2-east and 2-west. Region 2-east includes Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E. Region 2-west includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D, and 26A-W.

(b) Effective immediately, until further notice, that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(c) Effective immediately, until further notice, that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(d) Effective immediately, until further notice, those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

#### REPEALER

The following section[s] of the Washington Administrative Code is [are] repealed effective 7:00 p.m. October 15, 2014:

WAC 220-52-04000N Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts (14-300)

WAC 220-52-04600B Puget Sound crab fishery—Seasons and areas (14-300)

WAC 220-52-04600A Puget Sound crab fishery—Seasons and areas (14-276)

**WSR 14-21-114**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-291—Filed October 16, 2014, 12:02 p.m., effective October 18, 2014]

Effective Date of Rule: October 18, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-310-190.

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 Washington department of fish and wildlife will increase winter recreational opportunity in inland waters throughout the Puget Sound region by stocking more than three hundred thousand catchable-size (ten to twelve inches) or larger rainbow trout. Changes to rules are needed to provide for the additional opportunity enabled by the stocking. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 16, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-310-190001 Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective one hour before official sunrise on October 18, 2014, until further notice, the daily limit for the following lakes is 10 trout and no size restrictions for trout apply:

(1) Island Co. - Cranberry Lake

(2) King Co. - Angle Lake, Bitter Lake, Deep Lake, Fenwick Lake, Fish Lake, Fivemile Lake, Green Lake, Holm Lake, Shadow Lake,

(3) Snohomish Co. – Gissberg Lake (north and south), Tye Lake

(4) Thurston Co. – Lake Saint Clair

**WSR 14-21-115**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-306—Filed October 16, 2014, 2:24 p.m., effective October 17, 2014, 7:00 a.m.]

Effective Date of Rule: October 17, 2014, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-47-50100L.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This regulation modifies fishing schedules for Salmon Management and Catch Reporting Areas 7 and 7A per agreement with tribal comanagers. Pre-season agreements stipulated that the nontreaty fishery would reopen on October 17 if the chum catch was between fifteen thousand and twenty-five thousand fish after the first three scheduled days of the fishery. Actual catch is estimated to be approximately eighteen thousand fish. 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 16, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 220-47-50100L Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or

possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** – Open to purse seine gear with a 5 inch strip according to the times, dates, and conditions listed below:

Hours	Dates
7:00 AM – 6:00 PM	October 17

(a) It is unlawful to retain Chinook and coho.

(b) Purse seines are required to brail and fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

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

(2) **Gill Nets** – Open to gill net gear with 6 1/4 inch minimum mesh size according to the times, dates, and conditions listed below:

Hours	Dates
7:00 AM -11:59 PM	October 17

(a) It is unlawful to retain Chinook, coho, and rockfish.

(b) Recovery boxes are required for gill nets fishing in Areas 7 and 7A through October 18. In addition, gill net soak times (first mesh in to last mesh out) are limited to 45 minutes through October 18.

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

(3) **"Quick Reporting Fisheries"**: All fisheries opened under this section are designated as "Quick Reporting Required" as provided in WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 18, 2014:

WAC 220-47-50100L Puget Sound all-citizen commercial salmon fishery—Open periods

**WSR 14-21-124  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-305—Filed October 17, 2014, 1:58 p.m.]

Effective Date of Rule: October 22, 2014, 12:00 p.m.

Purpose: Amend recreational fishing rules for razor clams.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches are 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 17, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 220-56-36000Q 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, 3, 4, or 5, except as provided in this section:

(1) Effective 12:01 p.m. October 22 through 11:59 p.m. October 28, 2014, razor clam digging is permissible in Razor Clam Area 1. Digging for razor clams is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. October 22 through 11:59 p.m. October 28, 2014, razor clam digging is permissible in Razor Clam Area 3. Digging for razor clams is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. October 25 through 11:59 p.m. October 25, 2014, razor clam digging is permissible in Razor Clam Area 4. Digging for razor clams is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. October 24 through 11:59 p.m. October 26, 2014, razor clam digging is permissible in Razor Clam Area 5. Digging for razor clams is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 29, 2014:

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

**WSR 14-21-151**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-308—Filed October 21, 2014, 1:18 p.m., effective October 21, 2014, 1:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules to allow for commercial harvest of sea cucumber.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Harvestable surpluses of sea cucumbers exist in the districts specified to allow for commercial harvest. 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 21, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-07100I Sea cucumbers** Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided in this section:

(1) Sea cucumber harvest using shellfish diver gear is permissible in Sea Cucumber District 1 on Monday through Friday of each week.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,000 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 2,000 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum cumulative landing of 2,000 pounds.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100H Sea cucumbers. (14-233)

**WSR 14-21-152**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-307—Filed October 21, 2014, 1:22 p.m., effective November 1, 2014]

Effective Date of Rule: November 1, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500G; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: There are sufficient trout available within Blue Lake and Spring Lake for harvest after October 31, 2014, to extend the fishing season which will provide additional recreational angling 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 21, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500G Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective November 1 through December 31, 2014, it is permissible to fish in waters of Spring Lake and Blue Lake (Columbia Co.). Unless otherwise amended, all permanent rules remain in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2015:

WAC 220-310-19500G Freshwater exceptions to statewide rules—Eastside.

**WSR 14-21-153  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-299—Filed October 21, 2014, 2:06 p.m., effective November 1, 2014]

Effective Date of Rule: November 1, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: The Washington department of fish and wildlife will increase winter recreational opportunity

in inland waters throughout the Puget Sound region by stocking more than three hundred thousand catchable-size (ten to twelve inches) or larger rainbow trout. Changes to rules are needed to provide for the additional opportunity enabled by the stocking. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 21, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19000K Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective November 1, 2014, until further notice, it is permissible to fish in waters of Langlois Lake and Walker Lake.

(1) Daily limit of 10 trout.

(2) No size restrictions apply.

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

**WSR 14-21-155  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-309—Filed October 21, 2014, 2:57 p.m., effective October 21, 2014]

Effective Date of Rule: October 21, 2014.

Purpose: Amend recreational fishing rules for the Yakima River.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-310-19500H; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: A record return of coho salmon is returning to the upper Yakima River with over fifteen thousand counted passing Prosser Dam through October 20, 2014. Yakama Nation and Washington department of fish and wildlife biologists agree that a harvestable surplus is available to provide for recreational angling 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 21, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500H Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 220-310-195, effective October 22 through November 9, 2014, it is permissible to fish for coho salmon in the waters of the Yakima River from the Interstate 82 bridge at Union Gap to the "closed water" line 3,500 feet downstream of Roza Dam.

- (1) Daily limit of two coho.
- (2) Barbless hooks are required. Use of bait and knotted nets is permissible (selective gear rules are temporarily suspended).
- (3) Night closure is in effect.
- (4) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective November 10, 2014:

WAC 220-310-19500H Exceptions to statewide rules—  
Yakima River.

#### WSR 14-21-185

#### EMERGENCY RULES

#### LIQUOR CONTROL BOARD

[Filed October 22, 2014, 10:59 a.m., effective October 22, 2014, 10:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Emergency rules are needed to provide additional clarity to the marijuana rules regarding marijuana-infused products, specifically products that are appealing to children. The mission of the board is to keep alcohol, tobacco, and marijuana out of the hands of youth. Many marijuana-infused products on the medical marijuana market today are appealing to children. Products such as lollipops, gummy bears, and cotton candy are very appealing to children too young to read a label. Clarification is also needed on the security and surveillance systems requirements at marijuana licensed premises. Good laboratory practices are also needed until permanent rules are adopted.

Citation of Existing Rules Affected by this Order: Amending WAC 314-55-077, 314-55-079, 314-55-083, and 314-55-104.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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

Reasons for this Finding: Immediate adoption of these rules is necessary for the preservation of the public health and safety. Marijuana-infused products must not be appealing to children. Security and surveillance systems at a marijuana licensed premises must ensure that all parts of the premises are covered by security at all times to protect public safety. Labs must be properly accredited to perform quality assurance testing of marijuana that the public will consume.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, 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 22, 2014.

Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

**WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?** (1) A marijuana processor license allows the licensee to process, package, and label ~~((usable))~~ useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) A marijuana processor is allowed to blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) A marijuana processor licensee must obtain approval from the liquor control board for all marijuana-infused products, labeling, and packaging prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the liquor control board for approval.

If the liquor control board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing per chapter 34.05 RCW, Administrative Procedure Act.

(4) Marijuana-infused products in solid form that contain more than one serving must be scored to indicate individual serving sizes, and labeled so that the serving size is prominently displayed on the packaging.

(a) Marijuana-infused products must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(b) All marijuana-infused products must state on the label, "This product contains marijuana."

(5) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana to create ~~((an infused edible product))~~ marijuana-infused solid or liquid products meant to be ingested orally, that may be sold by a marijuana retailer. Marijuana-infused products that are designed to be especially appealing to children are prohibited.

(a) To reduce the risk to public health, ~~((food defined as))~~ potentially hazardous foods as defined in WAC ~~((246-215-0115(88)))~~ 246-215-01115 may not be infused with marijuana. ~~((These foods are))~~ Potentially hazardous ~~((as they))~~ foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. ~~((The board may designate other food items that may not be infused with marijuana.))~~ Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

~~((4))~~ (b) Other foods items that may not be infused with marijuana to be sold in a retail store are:

(i) Any food that has to be acidified to make it shelf stable;

(ii) Food items made shelf stable by canning or retorting;

(iii) Fruit or vegetable juices;

(iv) Fruit or vegetable butters;

(v) Pumpkin pies, custard pies, or any pies that contain egg;

(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(vii) Dried or cured meats.

(c) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(d) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(e) Per WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

(f) The liquor control board may designate other food items that may not be infused with marijuana.

(6) The recipe for any ~~((food infused with marijuana to make an edible product))~~ marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana ~~((producer's))~~ processor's licensed premises and made available for inspection by the ~~((WSLCB))~~ liquor control board or their designee.

~~((5))~~ (7) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

~~((6))~~ (8) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

~~((7))~~ (9) A marijuana processor producing a marijuana-infused solid or liquid product meant to be ingested orally in a processing facility as required in WAC 314-55-015(10) must pass a processing facility inspection. Ongoing annual processing facility compliance inspections may be required. The liquor board will contract with the department of agriculture to conduct required processing facility inspections. All costs of inspections are borne by the licensee and the hourly rate for inspection is sixty dollars. A licensee must allow the liquor control board or their designee to conduct physical visits and inspect the processing facility, recipes and required records per WAC 314-55-087 during normal business hours without advance notice. Failure to pay for the processing facility inspection or to follow the processing facility requirements outlined in this section and WAC 314-55-015 will be sufficient grounds for the board to suspend or revoke a marijuana license.

(10) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window

after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

~~((8))~~ (11) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

~~((9))~~ (12) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

~~((10))~~ (13) A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

**WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?** (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

Marijuana-infused products listed in WAC 314-55-077(5) are prohibited for sale by a marijuana retail licensee.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may not accept a return of product that has been opened.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

**WAC 314-55-104 Marijuana processor license extraction requirements.** (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO<sub>2</sub> gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch. The CO<sub>2</sub> must be of at least ninety-nine percent purity.

(4) Certification must be provided to the liquor control board for professional grade closed loop systems used by processors ~~((must be))~~ to certify that the system was commercially manufactured and built to codes of recognized and generally accepted good engineering practices, such as:

(a) The American Society of Mechanical Engineers (ASME);

(b) American National Standards Institute (ANSI);

(c) Underwriters Laboratories (UL); or

(d) The American Society for Testing and Materials (ASTM).

(5) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) Title 296 WAC;

(b) National Fire Protection Association (NFPA) standards;

(c) International Building Code (IBC);

(d) International Fire Code (IFC); and

(e) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

(6) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

Under WAC 314-55-077, infused dairy butter and oils or fats derived from natural sources may be used to prepare infused edible products, but they may not be prepared as stand-alone edible products for sale.

(7) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

(8) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully

trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(9) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

**WAC 314-55-083 What are the security requirements for a marijuana licensee?** The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises. All non-employee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises. A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit. All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance with minimum camera resolution of 640x470 pixels and cameras must be internet protocol (IP) compatible ((and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems)). All cameras must be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility shall be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously twenty-four hours per day and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request. All recorded images must clearly and accurately display the

time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

~~(a) ((All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.~~

~~(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.~~

~~(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.~~

~~(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.~~

~~(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.~~

~~(f)) Controlled areas include:~~

~~(i) Any area within an indoor, greenhouse or outdoor room or area where marijuana is grown, or marijuana or marijuana waste is being moved within, processed, stored, or destroyed. Booms or areas where marijuana or marijuana waste is never present are not considered control areas and do not require camera coverage.~~

~~(ii) All point-of-sale (POS) areas.~~

~~(iii) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.~~

~~(iv) Any room or area storing a surveillance system storage device.~~

~~(b) All marijuana or marijuana-infused products that are intended to be removed or transported ((from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer)) between two licensed premises shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product~~

be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

~~((g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.))~~

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of usable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, or marijuana-infused products are transported from a processor to a retailer;

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happen when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana-infused products, and marijuana waste;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.**

Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must, within twenty-four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(f) Producers may sample one gram of usable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the usable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the

employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

NEW SECTION

**WAC 314-55-103 Good laboratory practice checklist.** A third-party testing lab must be certified by the WSLCB or its vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the board or its vendor to certify third-party testing labs:

ORGANIZATION	Document Reference	Y	N	NA	Comments
1. The laboratory or the organization of which it is part shall be an entity that can be held legally responsible.					
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.					
a. If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.					
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.					
4. The laboratory is responsible for all costs of initial certification and ongoing site assessments.					
5. The laboratory must agree to site assessments every two years to maintain certification.					
6. The laboratory must allow WSLCB staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.					
7. The laboratory must report all test results directly into WSLCB's traceability system within twenty-four hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.					

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
8. Job descriptions for owners and all employees: Key staff.					
9. Qualifications of owners and staff: CVs for staff on file.					
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.					
b. Documentation that the scientific director meets the requirements of WSLCB rules.					
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.					
d. Written documentation of delegation of responsibilities (assigned under chapter 314-55 WAC as related to quality assurance testing) to qualified personnel, signed and dated by the laboratory director.					
e. Documentation of employee competency: Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.					
f. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.					
10. Written and documented system detailing the qualifications of each member of the staff.					
a. The need to require formal qualification or certification of personnel performing certain specialized activities shall be evaluated and implemented where necessary.					
11. Standard operating procedure manual that details records of internal training provided by facility for staff. Laboratory director must approve, sign and date each procedure.					
a. Instructions on regulatory inspection and preparedness.					
b. Instruction on law enforcement interactions.					
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.					

<b>HUMAN RESOURCES</b>	<b>Document Reference</b>	<b>Y</b>	<b>N</b>	<b>NA</b>	<b>Comments</b>
d. Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS sheets and the use of appropriate PPE.					
e. Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.					
f. Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.					
g. Biosafety and sterile technique training.					

<b>STANDARD OPERATING PROCEDURES</b>	<b>Document Reference</b>	<b>Y</b>	<b>N</b>	<b>NA</b>	<b>Comments</b>
<p>12. As appropriate, laboratory operations covered by procedures shall include but not be limited to the following:</p> <ul style="list-style-type: none"> <li>a. Environmental, safety and health activities;</li> <li>b. Sample shipping and receipt;</li> <li>c. Laboratory sample chain of custody and material control;</li> <li>d. Notebooks/logbooks;</li> <li>e. Sample storage;</li> <li>f. Sample preparation;</li> <li>g. Sample analysis;</li> <li>h. Standard preparation and handling;</li> <li>i. Post-analysis sample handling;</li> <li>j. Control of standards, reagents and water quality;</li> <li>k. Cleaning of glassware;</li> <li>l. Waste minimization and disposition.</li> </ul>					
<p>13. The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested:</p> <ul style="list-style-type: none"> <li>a. Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy);</li> <li>b. Unique terminology used;</li> <li>c. Summary of method;</li> <li>d. Interferences/limitations;</li> <li>e. Approaches to address background corrections;</li> <li>f. Apparatus and instrumentation;</li> <li>g. Reagents and materials;</li> <li>h. Hazards and precautions;</li> <li>i. Sample preparation;</li> </ul>					

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
j. Apparatus and instrumentation setup; k. Data acquisition system operation; l. Calibration and standardization; m. Procedural steps; n. QC parameters and criteria; o. Statistical methods used; p. Calculations; q. Assignment of uncertainty; r. Forms used in the context of the procedure.					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
14. Allocation of space: Adequate for number of personnel and appropriate separation of work areas.					
15. Arrangement of space.					
a. Allows for appropriate work flow, sampling, lab space separate from office and break areas.					
b. Employee bathroom is separate from any laboratory area.					
16. Adequate eyewash/safety showers/sink.					
17. Procurement controls.					
a. The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, receipt and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.					
b. The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.					
c. Prospective suppliers shall be evaluated and selected on the basis of specified criteria.					
d. Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.					
e. When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.					
18. Utilities.					
a. Electrical: i. Outlets: Adequate, unobstructed, single use, no multi-plug adaptors;					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
<ul style="list-style-type: none"> <li>ii. No extension cords;</li> <li>iii. Ground fault circuit interrupters near wet areas.</li> </ul>					
<ul style="list-style-type: none"> <li>b. Plumbing:                             <ul style="list-style-type: none"> <li>i. Appropriateness of sink usage: Separate for work/ personal use;</li> <li>ii. Adequate drainage from sinks or floor drains;</li> <li>iii. Hot and cold running water.</li> </ul> </li> </ul>					
<ul style="list-style-type: none"> <li>c. Ventilation:                             <ul style="list-style-type: none"> <li>i. Areas around solvent use or storage of waste solvent;</li> <li>ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet.</li> </ul> </li> </ul>					
<ul style="list-style-type: none"> <li>d. Vacuum:                             <ul style="list-style-type: none"> <li>i. Appropriate utilities/traps for prevention of contamination.</li> </ul> </li> </ul>					
<ul style="list-style-type: none"> <li>e. Shut-off controls: Located outside of the laboratory.</li> </ul>					
<p>19. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097, Marijuana waste disposal—Liquids and solids.</p>					
<p>20. Equipment list.</p>					
<ul style="list-style-type: none"> <li>a. Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include:                             <ul style="list-style-type: none"> <li>i. Name;</li> <li>ii. Serial number or unique identification;</li> <li>iii. Date received and placed in service;</li> <li>iv. Current location;</li> <li>v. Condition at receipt;</li> <li>vi. Manufacturer's instructions;</li> <li>vii. Date of calibration or date of next calibration;</li> <li>viii. Maintenance;</li> <li>ix. History of malfunction.</li> </ul> </li> </ul>					
<p>21. Maintenance.</p>					
<ul style="list-style-type: none"> <li>a. Regular preventive maintenance of equipment demonstration in logbook including, but not limited to: Thermometer calibration, pipette calibrations, analytical balances, and analytical equipment. Documentation of a schedule and reviewed by the laboratory director.</li> </ul>					
<ul style="list-style-type: none"> <li>b. Documentation of curative maintenance in logbook, signed and dated by laboratory director.</li> </ul>					
<ul style="list-style-type: none"> <li>c. Temperature maintenance log book for refrigerators.</li> </ul>					
<ul style="list-style-type: none"> <li>d. Decontamination and cleaning procedures for:</li> </ul>					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
<ul style="list-style-type: none"> <li>i. Instruments;</li> <li>ii. Bench space;</li> <li>iii. Ventilation hood.</li> </ul>					
<ul style="list-style-type: none"> <li>e. Documentation of adequacy of training of personnel and responsibility for each maintenance task.</li> </ul>					
<ul style="list-style-type: none"> <li>f. The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.</li> </ul>					
<p>22. Computer systems.</p>					
<ul style="list-style-type: none"> <li>a. Adequate for sample tracking.</li> </ul>					
<ul style="list-style-type: none"> <li>b. Adequate for analytical equipment software.</li> </ul>					
<ul style="list-style-type: none"> <li>c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.</li> </ul>					
<ul style="list-style-type: none"> <li>d. In addition, procedures for software control shall address the security systems for the protection of applicable software.</li> </ul>					
<ul style="list-style-type: none"> <li>e. For laboratory-developed software, a copy of the original program code shall be:                             <ul style="list-style-type: none"> <li>i. Maintained;</li> <li>ii. All changes shall include a description of the change, authorization for the change;</li> <li>iii. Test data that validates the change.</li> </ul> </li> </ul>					
<ul style="list-style-type: none"> <li>f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.</li> </ul>					
<ul style="list-style-type: none"> <li>g. Testing may consist of performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.</li> </ul>					
<ul style="list-style-type: none"> <li>h. The version and manufacturer of the software shall be documented.</li> </ul>					
<ul style="list-style-type: none"> <li>i. Commercially-available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.</li> </ul>					
<p>23. Security.</p>					
<ul style="list-style-type: none"> <li>a. Written facility security procedures during operating and nonworking hours.</li> </ul>					
<ul style="list-style-type: none"> <li>b. Roles of personnel in security.</li> </ul>					
<ul style="list-style-type: none"> <li>c. SOP for controlled access areas and personnel who can access.</li> </ul>					
<ul style="list-style-type: none"> <li>d. Secured areas for log-in of sample, and for short and long-term storage of samples.</li> </ul>					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
24. Storage.					
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.					
b. Adequate storage of chemical reference standards.					
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.					
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
25. Sampling/sample protocols: Written and approved by the laboratory director.					
a. Demonstrate adequacy of the chain-of-custody tracking upon receipt of sample including all personnel handling the sample.					
b. Sampling method (representative of an entire batch) including, but not limited to, homogenization, weighing, labeling, sample identifier (source, lot), date and tracking.					
c. Condition of the sample: Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.					
d. Failed inspection of product: Tracking and reporting.					
e. Return of failed product documentation and tracking.					
f. Disposal of used/unused samples documentation.					
g. Sample preparation, extraction and dilution SOP.					
h. Demonstration of recovery for samples in various matrices (SOPs): i. Plant material - Flower; ii. Edibles (solid and liquid meant to be consumed orally); iii. Topical; iv. Concentrates.					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
26. Data protocols.					
a. Calculations for quantification of cannabinoid content in various matrices - SOPs.					
b. Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.					
c. Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.					
d. Documentation that the value reported in the CA is within the range and limitations of the analytical method.					
e. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.					
f. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.					
g. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.					
27. Chemical assay procedure/methodology.					
28. Proficiency:					
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.					
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.					
c. Demonstration of calibration curve $r^2$ value of no less than 0.995 with a minimum of four points within the range.					
d. Documentation of any proficiency testing as it becomes available. Laboratory director must review, evaluate and report to the WSLCB any result that is outside the stated acceptable margin of error.					
29. Method validation: Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation; <b>or</b>					
30. Level II validation of methodology used for quantification of THC, THCA and CBD for total cannabinoid content (if reporting other cannabinoids, the method must also be validated for those compounds):					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
a. Single lab validation parameters are demonstrated for GC, HPLC data review: <ul style="list-style-type: none"> <li>i. Linearity of reference standards;</li> <li>ii. Use of daily standard curve;</li> <li>iii. Accuracy;</li> <li>iv. Precision;</li> <li>v. Recovery (5 determinations not less than 90%);</li> <li>vi. Reproducibility over time within a relative standard deviation of 5%.</li> </ul>					
b. Dynamic range of the instrumentation: Limits of quantification (LOQ) and limits of detection (LOD).					
c. Matrix extensions for each type of product tested, data review of recovery for: <ul style="list-style-type: none"> <li>i. Solvent-based extract;</li> <li>ii. CO<sub>2</sub> extraction or other "hash oil";</li> <li>iii. Extract made with food grade ethanol;</li> <li>iv. Extract made with food grade glycerin or propylene glycol;</li> <li>v. Infused liquids;</li> <li>vi. Infused solids;</li> <li>vii. Infused topical preparations;</li> <li>viii. Other oils, butter or fats.</li> </ul>					
d. Presence of QC samples and recording of daily testing.					
e. Appropriate use of an internal reference standard.					
f. Daily monitoring of the response of the instrument detection system.					
31. Other methods.					
a. Microbiological methods fit for purpose.					
b. Microbial contaminants within limits of those listed in the most recent AHP monograph and otherwise directed by WSLCB.					
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.					
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed 0.5% residual solvent by weight or 500 parts per million (PPM) per one gram of solvent based product and are to be tested.					
e. Any other QA/QC methods is proven to be fit for purpose.					
32. Laboratory notebooks.					
a. Legible and in ink (or computerized system).					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
b. Signed and dated.					
c. Changes initialed and dated.					
d. Periodically reviewed and signed by a management representative.					
33. Preventive/corrective action.					
a. The laboratory shall have a process in place to document quality affecting preventive/corrective actions through resolution.					
34. Periodic management review.					
a. Laboratory management shall periodically review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.					

**WSR 14-21-188  
EMERGENCY RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed October 22, 2014, 11:56 a.m., effective October 22, 2014, 11:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to enact changes to WAC that are also being routed via the standard WAC rule changes process; whereby a school district superintendent may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's eleventh grade year, from successfully demonstrating his or her skills and knowledge on the state high school assessment, on an objective alternate assessment authorized in RCW 28A.655.061 or 28A3655.065 [28A.655.065], or on a Washington alternate assessment available to students eligible for special education services. For purposes of this subsection, a special, unavoidable circumstance is a major irregularity in the administration of the assessment that meets the following criteria:

- (i) The major irregularity was caused by school district personnel,
- (ii) The student was not at fault for the irregularity, and
- (iii) The school district has taken appropriate disciplinary action against the school district personnel.

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-601 Eligibility and application requirements.

Statutory Authority for Adoption: RCW 28A.066.061 [28A.655.061] and 28A.655.065.

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 purpose of enacting the emergency rule for WAC 392-501-601 is to establish the rules we're requesting change to via the permanent rule change on a shorter timeline to allow for submission of special circumstance requests that may meet the criteria an [and] opportunity for review and recommendation by the Special Circumstance Appeals Panel October 22nd.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 22, 2014.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 10-01-053, filed 12/9/09, effective 1/9/10)

**WAC 392-501-601 Eligibility and application requirements.** (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year, from successfully demonstrating his or her skills and knowledge on the Washington assessment of student learning

(WASL), on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to students eligible for special education services.

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and severe medical condition. The condition must be documented by a medical professional and included with the application; or

(iii) Another unavoidable event of a similarly compelling magnitude that reasonably prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act, as amended, or in a plan required under Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district; or

(f) Students who transfer from an out-of-state or out-of-country school to a Washington public school in the twelfth grade year after March 1.

(3) A school district superintendent may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's eleventh grade year, from successfully demonstrating his or her skills and knowledge on the state high school assessment, on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to students eligible for special education services. For purposes of this subsection, a special, unavoidable circumstance is a major irregularity in the administration of the assessment that meets the following criteria:

(a) The major irregularity was caused by school district personnel;

(b) The student was not at fault for the irregularity; and

(c) The school district has taken appropriate disciplinary action against the school district personnel.

(4) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction.

~~((4))~~ (5) The application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student during his or her high school years, the medical condition report (if applicable), and the student's transcript. The principal of the school shall review the application and accompanying material and

certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

~~((5))~~ (6) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the school district's assessment coordinator who will conduct an independent review for completeness prior to transmitting the application to the state superintendent of public instruction.

~~((6))~~ (7) Applications must be received by the superintendent of public instruction on or before May 1 or October 1.