

**WSR 09-16-078**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed July 31, 2009, 12:11 p.m., effective August 1, 2009]

Effective Date of Rule: August 1, 2009.

Purpose: These amendments are necessary to meet the legislative requirements of sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 for durable medical equipment. Specifically, the department is eliminating the coverage for bathroom equipment, disinfectant sprays, surgical stockings, custom vascular supports, graduated compression stockings, and blood monitoring equipment; and changing the limits on nonsterile and sterile gloves, incontinence supplies, and test strips.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-543-2300; and amending WAC 388-543-1150, 388-543-1300, and 388-543-1600.

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

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

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

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislatively-mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011 by August 1, 2009. A CR-101 was filed on February 12, 2009, as WSR 09-05-057.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: July 14, 2009.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

**WAC 388-543-1150 Limits and limitation extensions.**

The department covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). The department evaluates such requests for LE under the provisions of WAC 388-501-0169. Procedures for LE are found in department billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;

(b) Alcohol wipes (box of two hundred) - one box per month;

(c) Betadine or pHisoHex solution - one pint per month;

(d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month; or

(e) ~~((Disinfectant spray - one twelve-ounce bottle or can per six-month period; or~~

~~(f))~~ Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.

(2) Blood monitoring/testing supplies:

(a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period; ~~((and))~~

(b) Spring-powered device for lancet - one in a six-month period.

(c) Test strips and lancets for an insulin dependent diabetic - one hundred of each, per month; and

(d) Test strips and lancets for a noninsulin dependent diabetic - one hundred of each, per three-month period.

(3) Braces, belts and supportive devices:

~~((Custom vascular supports (CVS) - two pair per six-month period. CVS fitting fee - two per six-month period;~~

~~(b) Surgical stockings (below the knee, above the knee, thigh-high, or full-length) - two pair per six-month period;~~

~~(c) Graduated compression stockings for pregnancy support (panty hose style) - two per twelve-month period;~~

~~((d))~~ Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;

~~((e))~~ (b) Ankle, elbow, or wrist brace - two per twelve-month period;

~~((f))~~ (c) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;

~~((g))~~ (d) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.

(4) Decubitus care products:

- (a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;
- (b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;
- (c) Heel or elbow protectors - four per twelve-month period.
- (5) Ostomy supplies:
  - (a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.
  - (b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.
  - (c) Adhesive remover or solvent - three ounces per month.
  - (d) Adhesive remover wipes, fifty per box - one box per month.
  - (e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.
  - (f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.
  - (g) Continent plug for continent stoma - thirty per month.
  - (h) Continent device for continent stoma - one per month.
  - (i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.
  - (j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.
  - (k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.
  - (l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.
  - (m) Irrigation bag - two every six months.
  - (n) Irrigation cone and catheter, including brush - two every six months.
  - (o) Irrigation supply, sleeve - one per month.
  - (p) Ostomy belt (adjustable) for appliance - two every six months.
  - (q) Ostomy convex insert - ten per month.
  - (r) Ostomy ring - ten per month.
  - (s) Stoma cap - thirty per month.
  - (t) Ostomy faceplate - ten per month. The department does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):
    - (i) Drainable pouches with plastic face plate attached; or
    - (ii) Drainable pouches with rubber face plate.
- (6) Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):
  - (a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)
  - (b) For a two-lead TENS unit - one kit per month.

- (c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).
- (d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).
- (7) Urological supplies - diapers and related supplies:
  - (a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:
    - (i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;
    - (ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;
    - (iii) The padding must provide uniform protection;
    - (iv) The product must be hypoallergenic;
    - (v) The product must meet the flammability requirements of both federal law and industry standards; and
    - (vi) All products are covered for client personal use only.
  - (b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:
    - (i) Be hourglass shaped with formed leg contours;
    - (ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;
    - (iii) Have leg gathers that consist of at least three strands of elasticized materials;
    - (iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;
    - (v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;
    - (vi) Have a topsheet that resists moisture returning to the skin;
    - (vii) Have an inner lining that is made of soft, absorbent material; and
    - (viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:
      - (A) For child diapers, at least two tapes, one on each side.
      - (B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.
  - (c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:
    - (i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;
    - (ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;
    - (iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;
    - (iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. The department approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see department billing instructions for how to specify this when billing). The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) ~~(Three)~~ Two hundred per month for a child three to eighteen years of age; and

(ii) Two hundred ~~((forty))~~ per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred ~~((forty))~~ per month.

(i) Disposable briefs and pull-up pants (any size) are limited to:

(i) ~~(Three)~~ Two hundred per month for a child age three to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred ~~((forty))~~ per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

(8) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

(9) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. The department reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

(e) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

(f) ~~((Syringes and needles ("sharps") disposal container for home use, up to one gallon size - two per month))~~ Non-sterile gloves - one hundred per box, two box per month.

(g) Sterile gloves - thirty pair, per month.

(10) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

(d) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

(e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(f) Pneumatic compressor - one in a five-year period.

(g) Positioning car seat - one in a five-year period.

(11) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

(12) Positioning devices:

(a) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

(b) Prone stander (child, youth, infant or adult size) - one in a five-year period.

(c) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

(13) Beds, mattresses, and related equipment:

(a) Pressure pad, alternating with pump - one in a five-year period.

(b) Dry pressure mattress - one in a five-year period.

(c) Gel or gel-like pressure pad for mattress - one in a five-year period.

(d) Gel pressure mattress - one in a five-year period.

(e) Water pressure pad for mattress - one in a five-year period.

(f) Dry pressure pad for mattress - one in a five-year period.

(g) Mattress, inner spring - one in a five-year period.

(h) Mattress, foam rubber - one in a five-year period.

(i) Hospital bed, semi-electric - one in a ten-year period.

(j) Bedside rails - one in a ten-year period.

(14) Other patient room equipment:

(a) Patient lift, hydraulic, with seat or sling - one in a five-year period.

(b) Traction equipment - one in a five year period.

(c) Trapeze bars - one in a five-year period.

(d) Fracture frames - one in a five-year period.

(e) Transfer board or devices - one in a five-year period.

(15) Noninvasive bone growth/nerve stimulators:

(a) Transcutaneous electrical nerve stimulation device (TNS) - one in a five-year period.

(b) Osteogenesis stimulators - one in a five-year period.

(16) Communication devices - artificial larynx, any type - one in a five-year period.

(17) Ambulatory aids:

(a) Canes - one in a five-year period.

(b) Crutches - one in a five-year period.

(c) Walkers - one in a five-year period.

~~((18) Bathroom equipment:~~

~~(a) Commode chairs - one in a five-year period.~~

~~(b) Tub stool or bench - one in a five-year period.~~

~~(c) Transfer bench for tub or toilet - one in a five-year period.~~

- ~~(d) Bed pans – one in a five-year period.~~
- ~~(e) Urinals – one in a five-year period.~~
- ~~(f) Shower/commode chairs – one in a five-year period.~~
- ~~(g) Bath seats/chairs – one in a five-year period.~~
- ~~(h) Potty chairs – one in a five-year period.~~

~~(19) Blood monitoring:~~

- ~~(a) Sphygmomanometer/blood pressure apparatus – one in a five-year period.~~
- ~~(b) Automatic blood pressure monitor – one in a five-year period.))~~

**AMENDATORY SECTION** (Amending WSR 07-04-036, filed 1/29/07, effective 3/1/07)

**WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered.** (1) The department pays only for DME and related supplies, medical supplies and related services that are medically necessary, listed as covered in this chapter, and meet the definition of DME and medical supplies as defined in WAC 388-543-1000 and prescribed per WAC 388-543-1100 and 388-543-1200.

(2) The department pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS) (~~, formerly known as HCFA,~~) that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and 388-543-1200.

(3) The department considers all requests for covered DME, related supplies and services, medical supplies, prosthetics, orthotics, and related services under the provisions of WAC 388-501-0165.

(4) The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-543-0100 for EPSDT rules).

(5) The department specifically excludes services and equipment in this chapter from fee-for-service (FFS) scope of coverage when the services and equipment do not meet the definition for a covered item, or the services are not typically medically necessary. This exclusion does not apply if the services and equipment are:

- (a) Included as part of a managed care plan service package;
- (b) Included in a waived program;
- (c) Part of one of the medicare programs for qualified medicare beneficiaries; or
- (d) Requested for a child who is eligible for services under the EPSDT program. The department reviews these requests according to the provisions of chapter 388-534 WAC.

(6) Excluded services and equipment include, but are not limited to:

- (a) Services, procedures, treatment, devices, drugs, or the application of associated services that the Food and Drug Administration (FDA) and/or the Centers for Medicare and

Medicaid Services (CMS) consider investigative or experimental on the date the services are provided;

- (b) Any service specifically excluded by statute;
- (c) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the department for the client contributes to an increased utility bill (refer to the aging and disability services administration's (ADSA) COPES program for potential coverage);
- (d) Hairpieces or wigs;
- (e) Material or services covered under manufacturers' warranties;
- (f) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;
- (g) Outpatient office visit supplies, such as tongue depressors and surgical gloves;
- (h) Prosthetic devices dispensed solely for cosmetic reasons (~~(refer to WAC 388-531-0150-1(d))~~);
- (i) Home improvements and structural modifications, including but not limited to the following:
  - (i) Automatic door openers for the house or garage;
  - (ii) Saunas;
  - (iii) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;
  - (iv) Swimming pools;
  - (v) Whirlpool systems, such as jacuzzies, hot tubs, or spas; or
  - (vi) Electrical rewiring for any reason;
  - (vii) Elevator systems and elevators; and
  - (viii) Lifts or ramps for the home; or
  - (ix) Installation of bathtubs or shower stalls.
- (j) Nonmedical equipment, supplies, and related services, including but not limited to, the following:
  - (i) Back-packs, pouches, bags, baskets, or other carrying containers;
  - (ii) Bed boards/conversion kits, and blanket lifters (e.g., for feet);
  - (iii) Car seats for children under five, except for positioning car seats that are prior authorized. Refer to WAC 388-543-1700(13) for car seats;
  - (iv) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;
  - (v) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;
  - (vi) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:
    - (A) Devices intended for amplifying voices (e.g., microphones);
    - (B) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services (refer to ADSA COPES or outpatient hospital programs for emergency response systems and services);
    - (C) Two-way radios; and
    - (D) Rental of related equipment or services;
  - (vii) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;

- (viii) Ergonomic equipment;
- (ix) Exercise classes or equipment such as exercise mats, bicycles, tricycles, stair steppers, weights, trampolines;
- (x) Generators;
- (xi) Computer software other than speech generating, printers, and computer accessories (such as anti-glare shields, backup memory cards);
- (xii) Computer utility bills, telephone bills, internet service, or technical support for computers or electronic notebooks;
- (xiii) Any communication device that is useful to someone without severe speech impairment (e.g., cellular telephone, walkie-talkie, pager, or electronic notebook);
- (xiv) Racing strollers/wheelchairs and purely recreational equipment;
- (xv) Room fresheners/deodorizers;
- (xvi) Bidet or hygiene systems, sharp containers, paraffin bath units, and shampoo rings;
- (xvii) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;
- (xviii) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or
- (xix) Wheeled reclining chairs, lounge and/or lift chairs (e.g., geri-chair, posture guard, or lazy boy).
- (k) Blood monitoring:
  - (i) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope:
    - (ii) Blood pressure cuff only; and
    - (iii) Automatic blood pressure monitor.
  - (l) Bathroom equipment:
    - (i) Bath stools;
    - (ii) Bathtub wall rail (grab bars);
    - (iii) Bed pans;
    - (iv) Control unit for electronic bowel irrigation/evacuation system;
    - (v) Disposable pack for use with electronic bowel system;
      - (vi) Potty chairs;
      - (vii) Raised toilet seat;
      - (viii) Safety equipment (e.g. belt, harness or vest);
      - (ix) Shower/commode chairs;
      - (x) Sitz type bath or equipment;
      - (xi) Standard and heavy duty bath chairs;
      - (xii) Toilet rail;
      - (xiii) Transfer bench tub or toilet;
      - (xiv) Urinal male/female.
    - (m) Disinfectant spray - one twelve-ounce bottle or can per six-month period.
    - (n) Personal and **comfort items** (~~that do not meet the DME definition~~), including but not limited to the following:
      - (i) Bathroom items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;
      - (ii) Bedding items, such as bed pads, blankets, mattress covers/bags, pillows, pillow cases/covers (~~and~~), sheets, and bumper pads;
      - (iii) Bedside items, such as bed trays, carafes, and over-the-bed tables;

- (iv) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, (~~and~~) socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and graduated compression stockings for pregnancy support (pantyhose style);
- (v) Clothing protectors, surgical masks, and other protective cloth furniture coverings;
- (vi) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;
- (vii) Diverter valves and handheld showers for bathtub;
- (viii) Eating/feeding utensils;
- (ix) Emesis basins, enema bags, and diaper wipes;
- (x) Health club memberships;
- (xi) Hot or cold temperature food and drink containers/holders;
- (xii) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;
- (xiii) Impotence devices;
- (xiv) Insect repellants;
- (xv) Massage equipment;
- (xvi) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;
- (xvii) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;
- (xviii) Page turners;
- (xix) Radio and television;
- (xx) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services; and
- (xxi) Toothettes and toothbrushes, waterpics, and peridental devices whether manual, battery-operated, or electric.
- ((H)) (o) Certain wheelchair features and options are not considered by the department to be medically necessary or essential for wheelchair use. This includes, but is not limited to, the following:
  - (i) Attendant controls (remote control devices);
  - (ii) Canopies, including those for strollers and other equipment;
  - (iii) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);
  - (iv) Identification devices (such as labels, license plates, name plates);
  - (v) Lighting systems;
  - (vi) Speed conversion kits; and
  - (vii) Tie-down restraints, except where medically necessary for client-owned vehicles.

**Reviser's note:** The spelling 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 07-17-062, filed 8/13/07, effective 9/13/07)

**WAC 388-543-1600 Items and services which require prior authorization.** (1) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services

require **prior authorization (PA)** or **expedited prior authorization (EPA)** on utilization criteria. (See WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA.) The department considers all of the following when establishing utilization criteria:

- (a) High cost;
  - (b) Potential for utilization abuse;
  - (c) Narrow therapeutic indication; and
  - (d) Safety.
- (2) The department requires providers to obtain prior authorization for certain items and services, except for dual-eligible medicare/medicaid clients when medicare is the primary payer. This includes, but is not limited to, the following:
- (a) Augmentative communication devices (ACDs);
  - (b) Certain by report (BR) DME and supplies as specified in the department's published issuances, including billing instructions and numbered memoranda;
  - (c) Blood glucose monitors requiring special features;
  - (d) Certain equipment rentals and certain prosthetic limbs, as specified in the department's published issuances, including billing instructions and numbered memoranda;
  - (e) Decubitus care products and supplies;
  - (f) Decubitus care mattresses, including flotation or gel mattress, if the provider fails to meet the criteria in WAC 388-543-1900;
  - (g) Equipment parts and labor charges for repairs or modifications and related services;
  - (h) Hospital beds, if the provider fails to meet the requirements in WAC 388-543-1900;
  - (i) Low air loss flotation system, if the provider fails to meet the requirements in WAC 388-543-1900;
  - (j) Orthopedic shoes and selected orthotics;
  - (k) Osteogenic stimulator, noninvasive, if the provider fails to meet the requirements in WAC 388-543-1900;
  - (l) Positioning car seats for children under five years of age;
  - (m) Transcutaneous electrical nerve stimulators, if the provider fails to meet the requirements in WAC 388-543-1900;
  - (n) Wheelchairs, wheelchair accessories, wheelchair modifications, air, foam, and gel cushions, and repairs;
  - (o) ~~((Wheelchair-style shower/commode chairs;~~
  - ~~((p)))~~ Other DME not specifically listed in the department's published issuances, including billing instructions and numbered memoranda, and submitted as a miscellaneous procedure code; and
  - ~~((p)))~~ (p) Limitation extensions.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-543-2300	Bathroom/shower equipment.
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**WSR 09-17-001**  
**EMERGENCY RULES**  
**SECRETARY OF STATE**  
(Elections Division)

[Filed August 5, 2009, 1:11 p.m., effective August 5, 2009, 1:11 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of these rules is to implement new legislation passed by the 2009 Washington state legislature that is already in effect.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-324-075, 434-324-100, 434-324-190, 434-324-200, 434-324-210, 434-324-220, 434-324-230, 434-324-240, 434-324-250 and 434-324-260; and amending WAC 434-230-015, 434-235-020, 434-235-030, 434-261-005, 434-261-086, 434-324-005, 434-324-008, 434-324-010, 434-324-040, 434-324-045, 434-324-085, 434-324-090, 434-324-095, 434-324-106, 434-324-113, 434-324-130, and 434-324-165.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Reasons for this Finding: The 2009 Washington state legislature passed new legislation, SSB 5270, 6122, and SB 5359, that became effective on July 26, 2009. There is insufficient time to adopt these rules through the permanent rule-making process pursuant to the deadlines of the August primary and the November general election. In addition, the office of the secretary of state has sent a draft of the proposed rules to stakeholders and interested parties on July 6, 2009, and posted the draft rules on the agency's web site. The agency s [is] accepting public comment through August 25, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 18, Repealed 10.

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: August 5, 2009.

Steve Excell  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

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

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

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

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

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

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

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

(6) Ballots shall be formatted as provided in RCW 29A.36.170. Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.-121, 29A.36.161(4), and 29A.36.191.

(7) Removable stubs are not considered part of the ballot.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-235-020 Voter registration.** (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140(~~(, 29A.08.145, and WAC 434-324-075)~~) have passed.

(a) If the voter is not (~~(previously)~~) currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system accordingly.

(b) (~~(A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as outlined in RCW 29A.08.113.)~~) A uniformed, service, or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to (~~(an)~~) a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.

(d) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as required in RCW 29A.08.107.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-235-030 Absentee voting.** (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

(a) Any manner authorized by WAC 434-250-030;

(b) A federal post card application issued by the federal voting assistance program; or

(c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor may issue an absentee ballot by mail, e-mail, fax, or other means as specifically requested by the voter.

(4) (~~(If a voters' pamphlet for that primary or election is available, the county auditor must include a voters' pamphlet with the absentee ballot.)~~) Pursuant to RCW 29A.40.061, the



county auditor shall provide the appropriate web site information with the absentee ballot.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, ~~((the secretary of state must furnish envelopes and instructions for absentee ballots issued to uniformed, overseas and service voters. Absentee ballots issued to voters in these categories must be mailed postage free, and))~~ return envelopes must be ~~((marked))~~ printed to indicate that they may be returned postage-free. ~~((For purposes of RCW 29A.40.150, service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW.))~~

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

**WAC 434-261-005 Definitions.** (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of ~~((vote))~~ voter intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" on a ballot envelope for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) A mark witnessed by two people.

(6) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one."

(7) "Undervote" is no selections made for a race or measure.

(8) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

**WAC 434-261-086 Statewide standards on what is a vote.** (1) Pursuant to 42 U.S.C. § 15481 (a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area ~~((will only))~~ shall be valid only if they fulfill the consistent pattern requirements in (b) of this subsection. Marks that trace or outline the target area are not valid votes unless they fulfill the consistent pattern requirements in (b) of this subsection. Exceptions:

(i) Obvious stray marks.

(ii) Hesitation marks.

(iii) Parts of written notes.

(iv) Corrected votes, ~~((according to the instructions printed on the ballot or written instructions provided by the voter, which may include arrows, circles, and written words))~~ as described in (c) and (e) of this subsection.

(b) Consistent pattern. Marks made outside of the target area shall only be counted as valid votes if a consistent pattern of marks is used throughout the whole ballot. This means that all races and issues for which the voter has indicated a choice must have the same mark. If some marks are in the target area and some are not, but the same *type* of mark is used in a consistent pattern throughout the whole ballot, ~~((they))~~ all such marks shall ~~((#))~~ be counted as valid votes. If the marks strike through candidate names or ballot measure responses in a consistent pattern throughout the whole ballot, all such marks shall be counted as valid votes.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote(;

~~((;))~~ If a second choice is not marked, the race shall be considered undervoted(;;).

(iii) If the voter has marked two target areas and placed an 'X' over one of the marked areas, the choice without the 'X' shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and ~~((also))~~ placed an 'X' in the same target area, but has not marked a second target ~~((area as if attempting to correct the vote))~~, it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to correct a vote and provides written instruction ~~((#))~~ regarding his or her intent, it shall be counted as the voter instructed. Written instruction includes words, circles, or arrows.

(f) Identifying marks. ~~((Ballots that have a legible signature, address sticker or address stamp anywhere on the ballot,~~

other than a write-in line, must be rejected. Initials or illegible signatures)) Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) ~~((No bubble.))~~ Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a declared write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) ~~((Mystery))~~ Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) ~~((Mystery))~~ Write-in ((with a)): Blank line and candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: Overvotes. If a candidate's target area is marked and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. This applies whether or not the target area for the write-in is marked.

(o) Write-in: Not eligible. A write-in vote for a race ~~((that does not appear on the ballot is for a race on which the voter is not eligible to vote, and))~~ not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked for a candidate partially extend into the response area of another candidate, it shall be counted as a vote if most of the mark is in the proper area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

(s) Anything else. Voter intent on ~~((any))~~ questionable marks not ~~((explicitly falling within the parameters of))~~ covered by the rules in this manual must be determined by county canvassing boards ~~((, operating under))~~ according to all applicable laws of the state of Washington and the ~~((rules of the))~~ canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

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

**WAC 434-324-005 Definitions.** As used in this chapter:

(1) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(2) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(3) "Auditor" means "county auditor" and means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(4) "County election management system" means software used by county auditors to manage computer files pertaining to elections and includes, but is not limited to, voter registration records.

(5) "County registration number" means an identifier assigned to each registered voter by the county auditor.

~~((6))~~ ~~((("Motor voter data" means computer information concerning an applicant that is common to both driver's license and voter registration records. This includes name, address, date of birth, sex, the date of the application, the location of the office where the application was submitted, the applicant's driver's license number, the applicant's Social Security number (if provided), and the applicant's previous driver's license number if the applicant has changed names.~~

~~((7))~~ "Electronic registration" means the electronic submission of voter registration applications.

~~((8))~~ (7) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration data base.

~~((9))~~ "Late registration absentee ballot" means an absentee ballot cast by a voter who registered pursuant to RCW 29A.08.145 after the close of the regular registration period.

~~((10))~~ "Licensing agent" or "agent" means the employees serving the public at driver's licensing offices operated by the department of licensing.

~~((11))~~ ~~((8))~~ "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

~~((12))~~ ~~((9))~~ "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

~~((13))~~ ~~((10))~~ "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter.

~~((14))~~ ~~((11))~~ "Pending cancellation" means the registered voter's registration record must be canceled within a specified amount of time and he or she is not eligible to vote.

~~((15))~~ ~~((12))~~ "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

~~((16))~~ ~~((13))~~ "Secretary" means secretary of state or any other person authorized by the secretary of state to act on his or her behalf.

~~((17))~~ ~~((14))~~ "State registration number" means a unique identifier assigned to each registered voter by the state, pursuant to RCW 29A.08.651.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-008 Review of county election management systems.** (1) Each auditor must notify the secretary of the intent to purchase or install a new county election management system. The county election management system must be approved by the secretary to ensure it meets the technical specifications promulgated by the secretary to interface with the official statewide voter registration data base. This approval must be obtained prior to the purchase or installation of the system.

(2) A county election management system must have the capability to:

- (a) Store information required in WAC 434-324-010;
- (b) Generate a list of registered voters in a county and their registration statuses;
- (c) Track information specific to single elections, including the issuance and return of vote by mail and absentee ballots;
- (d) Scan voter registration forms; and
- (e) Store and provide access to images of signatures of registered voters.

(3) A county's election management system must conform to all of the requirements of state law and of these regulations, and if it does not, the secretary must notify the auditor of the nature of the nonconformity. The auditor must correct the nonconforming aspects of the county election management system and provide to the secretary such evidence of the change or changes in the system as ~~((that office))~~ the secretary may deem appropriate.

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

**WAC 434-324-010 County election management system—Applications for voter registration.** (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration data base by using a county election management system. Each record must contain at least the following information from the voter registration application in a format compatible with the official statewide voter registration data base:

- (a) Name;
- (b) Complete residential address;
- (c) Complete mailing address;
- (d) County registration number;
- (e) State registration number;
- (f) Gender;
- (g) Date of birth;
- (h) Date of registration;
- (i) Applicable district and precinct codes;
- (j) ~~((Dates upon))~~ Elections in which the individual has voted, if available;
- (k) Washington state driver license number, Washington state identification card number, and/or the last four digits of the applicant's Social Security number;
- (l) A scanned image file (format .tiff) of the applicant's signature.

(2) In the case of an applicant who ~~((applies for voter registration by mail and sends))~~ provides a copy of one of the alternative forms of identification listed in RCW ~~((29A.08-413))~~ 29A.08.107 for registration purposes, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was provided to the auditor. Pursuant to RCW 29A.08.710, a scanned image of the identification is not available for public inspection or copying.

(3) Upon entry of an applicant's information, the auditor must check for duplicate entries.

(4) Each auditor must have a quality assurance program to maintain accurate data entry into the statewide voter registration data base.

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

**WAC 434-324-040 Data transfer to secretary and registration status.** (1) Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the secretary for identity verification. The secretary must assign the application a state identification number.

(2) If the applicant provided a Washington driver's license number or state identification card number, the applicant's identity is verified with the department of licensing. If the applicant provided the last four digits of his or her Social Security number, the applicant's identity is verified with the Social Security Administration through the department of licensing.

(3) If the applicant's identity is not verified in the computerized verification process, the secretary must notify the county election management system accordingly. The county

auditor must first confirm the accuracy of the information entered in the county election management system from the voter registration application. The county auditor must correct any errors and again attempt to verify the applicant's identity automatically.

(4) If the applicant provided a Washington driver's license number or state identification number and the identity is not verified in the computerized verification process, the information on the application may be considered a "match" if the number on the application exactly matches a number issued by the department of licensing, and it is clear to the county auditor that the information on the application describes the person on the department of licensing record. Reasons that the county auditor may conclude that the information on the application describes the person on the department of licensing record include, but are not limited to, the following:

(a) The first, middle, or last name on the application is a variation of the first, middle, or last name in the department of licensing record;

(b) The first, middle, or last name has transposed letters or another typographical error on the application or in the department of licensing record;

(c) The first and last names are transposed on the application or in the department of licensing record;

(d) The first and middle names are transposed on the application or in the department of licensing record;

(e) The applicant has a compound or hyphenated name which is not accurately or completely set forth on the application or in the department of licensing record;

(f) The first or middle name is abbreviated with initials on the application or in the department of licensing record;

(g) The last name on the application and the last name in the department of licensing record are not the same but, based on other information, the county auditor concludes that one of the names is a maiden name or a former name of the same person; or

(h) The month and day of the applicant's date of birth are transposed on the application or in the department of licensing record.

If the county auditor concludes that the information on the application describes the person on the department of licensing record, the county auditor must override the computerized failure to verify and must note the reason it is considered a match. The county auditor must place the applicant on the official list of registered voters in active status.

(5) If the applicant's identity is not verified in the computerized verification process, either because the information did not match or because the applicant claimed he or she did not have a driver's license or Social Security number, the applicant must be provisionally registered pursuant to RCW 29A.08.107. The registration record must be flagged as still requiring verification of the applicant's identity before the applicant's ballot may be counted.

**AMENDATORY SECTION** (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

**WAC 434-324-045 Verification of applicant's identity.** (1) If the applicant is provisionally registered pursuant to

WAC 434-324-040(5), the county auditor must verify the applicant's identity before counting the applicant's ballot. The county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, e-mail or other means to obtain identification information.

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an ~~((identity verification))~~ identification notice that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The ~~((identity verification))~~ identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, he or she is provisionally registered to vote.

(b) A statement explaining that if this information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide a copy of one of the following forms of identification either before or when they vote:

(i) A Washington driver's license or state ID card;

(ii) The last four digits of his or her Social Security number;

(iii) Valid photo identification;

(iv) A valid enrollment card of a federally recognized tribe in Washington;

(v) A current utility bill, or a current bank statement;

(vi) A current government check;

(vii) A current paycheck; or

(viii) A government document, other than a voter registration card, that shows both the registrant's name and current address.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. If the applicant votes by mail, he or she must be notified that the ballot will not be counted unless he or she provides adequate verification of identity.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration shall be canceled.

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

**WAC 434-324-085 Acknowledgment notice ~~((of new registration or transfer))~~.** (1) The auditor must send an ~~((acknowledgement))~~ acknowledgment notice to an individual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers his or her registration record within the county;
- (c) Transfers his or her registration record from another county within Washington state; or
- (d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The ~~((notice must acknowledge that the request of the individual has been processed and))~~ acknowledgment notice must include:

- (a) Voter's full name;
- (b) Mailing address;
- (c) County name;
- (d) Precinct name and/or number; and
- (e) The date the voter registered.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

**WAC 434-324-090 Cancellation due to death—Process ~~((and notification))~~.** (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons information from the Social Security Administration. Comparisons must be conducted on a monthly basis. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a county list of matching names, identified as potentially deceased voters, and ~~((deliver it to the))~~ provide the names to each auditor electronically. The auditor must review the list within five days and approve or reject the proposed cancellations. The secretary may assist the auditor with this review.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-095 Cancellation due to death—Forms ~~((to cancel voter registration))~~.** Pursuant to RCW 29A.08.510, the auditor must ~~((maintain a supply of,))~~ furnish to the public upon request ~~((, and include in the supplies sent to each precinct for use by the precinct election officials,))~~ forms for the purpose of permitting registered voters to request that the voter registration record of any person, whom they personally know to be deceased, be canceled.

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

**WAC 434-324-106 Felony conviction—Secretary's quarterly comparisons.** (1) Once a quarter, the secretary must perform comparisons with the department of corrections, as authorized in RCW 29A.08.520, to search for registration records of felons who are under the ~~((legal custody))~~ authority of the department of corrections due to an adult felony conviction. The secretary must create a list of felon vot-

ers by matching the first name, last name, date of birth, and other identifying information.

(2) For each felon voter, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee or mail ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in a poll book or be mailed an absentee or mail ballot.

(3) The secretary must mail a notification letter to each felon whose status is pending cancellation. The notification letter must be sent to the felon's last known registration mailing address and to the department of corrections indicating that his or her voter registration is about to be canceled. The letter must contain language notifying the felon that he or she ~~((may))~~ must contact the auditor's office to ~~((correct the information or request a hearing if the felon status is not correct or the right to vote has been restored))~~ contest the pending cancellation. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. The notification letter must ~~((contain substantially the following language:~~

~~Dear \_\_\_\_\_,~~

~~According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled or by a certificate of restoration issued by the governor.~~

~~Based on name, date of birth, and other identifying information maintained in state voter registration records and department of corrections records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:~~

- ~~Felon's name~~
- ~~Felon's date of birth~~
- ~~County of conviction~~
- ~~Case/cause number~~

~~Your voter registration is pending cancellation. If you would like to dispute this finding, you have 30 days from the post-mark date on the envelope to provide documentation that this is incorrect or request a hearing. You must contact:~~

- ~~County auditor~~
- ~~County auditor's address~~
- ~~County auditor's phone number~~

~~You may also request a provisional ballot for any election scheduled to occur prior to the resolution of your registration status.~~

~~If you do not contact the county elections department within 30 days to dispute the finding, your voter registration will be canceled.~~

~~Voting before the right is restored is a class C felony. The right to vote may be restored by proof of one of the following for each felony conviction:~~

1. ~~A certificate of discharge, issued by the sentencing court;~~
2. ~~A court order restoring civil right, issued by the sentencing court;~~
3. ~~A final discharge and restoration of civil rights, issued by the indeterminate sentence review board; or~~
4. ~~A certificate of restoration, issued by the clemency and pardons board; or~~
5. ~~A pardon, issued by the governor.~~

Further information about how to get the right to vote restored may be found at [www.seestate.wa.gov/elections/faq.aspx](http://www.seestate.wa.gov/elections/faq.aspx).

Sincerely,

Elections Division  
Office of the Secretary of State

The secretary must provide an explanation of the requirements for restoring the right to vote.) include:

(a) An explanation that a felon loses the right to vote until the right is restored;

(b) For a conviction in a Washington state court, the right to vote is restored as long as the felon is not serving a sentence of confinement or subject to community custody with the department of corrections;

(c) The reason the felon has been identified as ineligible to vote;

(d) An explanation that the felon's voter registration will be canceled due to the felony conviction; and

(e) How to contest the pending cancellation. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(5) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's civil rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation ~~((based on the same felony conviction))~~ on the same basis.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documenta-

tion, such as a copy of the judgment and sentence, or custody or supervision information from the department of corrections, sufficient to prove ~~((the felony conviction))~~ by clear and convincing evidence that the felon is ineligible to vote. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation ~~((based))~~ on the same ((felony conviction)) basis.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation ~~((based))~~ on the same ((felony convictions)) basis. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (6) through (9) of this section.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

**WAC 434-324-113** ~~((Voter registration list maintenance))~~ **Lacking the qualifications necessary to vote.** ~~((In addition to conducting searches to identify felons, duplicate registration records, and deceased voters as outlined in this chapter, the following applies:~~

~~(1) Each even-numbered year, maintenance of the voter registration list, as required by RCW 29A.08.605, must be completed ninety days prior to the date of the primary in that year. If a county conducts all elections by mail and receives address change information from each ballot mailing, additional list maintenance is not required. The voter registration list maintenance program is complete upon mailing the required notices. Counties have discretion to also run the voter registration list maintenance in odd-numbered years.~~

~~(2)) (1) If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor and county prosecutor.~~

~~((3)) (2) If, at any time, the auditor finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the auditor must notify the county prosecutor.~~

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

**WAC 434-324-130 Lists of registered voters for the public.** (1) Pursuant to the provisions of RCW 29A.08.710, 29A.08.720 and 29A.08.740, the auditor or secretary must furnish to any person, upon request, the current list of registered voters at actual reproduction cost. The auditor or secretary may also provide a list of canceled voters. Auditors may combine these lists. The auditor or secretary may, upon request, select names and addresses from the voter registration records on the basis of the precinct code, the district code, date of registration, or voting history of each individual voter in that portion of the voter registration file. Such lists must contain the information prescribed in RCW 29A.08.710 for each registered voter and may be in ~~((the form of computer printouts, microfilm duplicates, or electronic media copies of such information))~~ printed or electronic form.

(2) Such voter registration lists may not be used for commercial purposes. The person making the request must be provided a copy of RCW 29A.08.740.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

**WAC 434-324-165 Disaster recovery and security plans.** The secretary must maintain disaster recovery and security plans for the voter registration data base. A copy of the plans must be stored offsite. Both plans are exempt from public disclosure pursuant to RCW ~~((42.17.310-1(d)))~~ 42.56.420.

~~((MOTOR VOTER))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-324-075 Timelines for new and transfer registrations.

WAC 434-324-100	Felony conviction—Notice from county clerk.
WAC 434-324-190	Voter registration at driver's license facilities.
WAC 434-324-200	Registration procedure.
WAC 434-324-210	Oaths and warnings.
WAC 434-324-220	Transfer of information from the department of licensing to the secretary of state.
WAC 434-324-230	Weekly transmittal of data from the department of licensing to the secretary of state.
WAC 434-324-240	Transfer of data, and reports from the secretary of state to the county auditors.
WAC 434-324-250	Transfer of voter registration forms to counties.
WAC 434-324-260	Processing records received from the secretary of state.

**WSR 09-17-002  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-162—Filed August 5, 2009, 2:56 p.m., effective August 7, 2009, 12:01 a.m.]

Effective Date of Rule: August 7, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule conforms to federal action by Pacific Fishery Management Council. There is sufficient recreational quota to provide for this fishery in Marine Area 1. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 5, 2009.

Lori Preuss  
for Philip Anderson  
Director

### NEW SECTION

**WAC 220-56-25500U Halibut—Seasons—Daily and possession limits.** Notwithstanding the provisions of WAC 220-56-255, effective 12:01 a.m. August 7, 2009, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) Marine Area 1 - Open 12:01 a.m. August 7, 2009 until further notice, Fridays, Saturdays and Sundays only.

(2) Marine Area 2 - (Northern Nearshore fishery): Those waters from 47°25.00'N. latitude (Queets River) south to 46°58.00'N latitude and east of 124°30.00'W longitude, open through September 30, 2009, Thursday through Sundays only.

(3) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(4) All other permanent rules remain in effect.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 7, 2009:

WAC 220-56-25500T Halibut—Seasons—Daily and possession limits. (09-122)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2009:

WAC 220-56-25500U Halibut—Seasons—Daily and possession limits.

**WSR 09-17-020  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-161—Filed August 6, 2009, 3:54 p.m., effective August 6, 2009, 3:54 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule reopens the pot fishery season in Catch Area 23B and Shrimp Management Area 1A, and closes the pot fishery season in Shrimp Management Area 1B and Catch Area 26B-2 because the spot shrimp quotas there have been harvested. 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: August 6, 2009.

Lori Preuss  
for Philip Anderson  
Director

### NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 26B-1, 26C and the Discovery Bay Shrimp District are closed.

(ii) Effective immediately, until further notice, all waters of Shrimp Management Areas 1C, 2E, 2W and Catch Area 23B are closed to the harvest of spot shrimp, except as indicated in Subsection (iv) below.

(iii) Effective 11:59 p.m. August 9, 2009, until further notice, all waters of Shrimp Management Area 1B are closed



to the harvest of spot shrimp and all waters of Catch Area 26B-2 are closed to the harvest of all shrimp species.

(iv) Effective 11:59 p.m. August 9, 2009, until 11:59 p.m. August 16, 2009, all waters of Shrimp Management Area 1A and Catch Area 23B are open to the harvest of all shrimp species.

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

(c) Effective 11:59 p.m. August 9, 2009, until 11:59 p.m. August 16, 2009, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 250 pounds per week in Shrimp Management Area 1A or to exceed 200 pounds per week in Catch Area 23B.

(d) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds per week in Shrimp Management Area 1B. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

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

(2) Shrimp beam trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open immediately until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is open immediately until further notice.

(d) All waters of Catch Area 20A are open immediately until further notice.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100T	Puget Sound shrimp pot and beam trawl fishery—Season. (09-151)
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### **WSR 09-17-024 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 09-163—Filed August 7, 2009, 8:53 a.m., effective August 7, 2009, 8:53 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sufficient numbers of stocked chinook salmon are available to continue the fishery in Lake Chelan. This rule is interim until permanent rules are adopted and take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: August 7, 2009.

Lori Preuss  
for Philip Anderson  
Director

### NEW SECTION

**WAC 232-28-61900X Exceptions to statewide rules—Lake Chelan (Chelan Co.)** Notwithstanding the provisions of WAC 232-28-619, effective immediately until fur-

ther notice, a person may fish for salmon in waters of Lake Chelan, except closed within 400 feet of the mouth of all tributaries. Daily limit of one Chinook salmon, minimum size 15 inches in length.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900L	Exceptions to statewide rules—Lake Chelan (Chelan Co.) (09-48)
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**WSR 09-17-028**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-164—Filed August 7, 2009, 2:40 p.m., effective August 7, 2009, 2:40 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Reduces the area for the August 9 fishing period - takes away the lower zone because of higher than expected catches in the first two periods. The seasons are consistent with the 2008-2017 interim management agreement, the 2009 non-Indian salmon allocation agreement and the 2006-2009 sturgeon accord. Salmon and sturgeon are available for harvest during fall season fisheries.

The regulation is consistent with compact action of August 7, 2009. There is insufficient time to promulgate permanent rules.

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 7, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

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

**1. Mainstem Columbia River**

a. SEASON: 7:00 p.m. August 9 to 7:00 a.m. August 10, 2009

8:00 p.m. August 18 to 6:00 a.m. August 19, 2009

8:00 p.m. August 20 to 6:00 a.m. August 21, 2009

8:00 p.m. August 23 to 6:00 a.m. August 24, 2009

8:00 p.m. August 25 to 6:00 a.m. August 26, 2009

8:00 p.m. August 27 to 6:00 a.m. August 28, 2009

b. AREA: August 9-10: SMCRA 1B, 1C, 1D, 1E (Zones 2-5)

August 18-24: SMCRA 1C, 1D, 1E (Zones 3-5)

**Upstream of the Kalama River.** (Upstream of a line projected from the Goble Ramp on the Oregon Shore to the downstream end of the Kalama Chemical dock on the Washington shore).

August 25-28: SMCRA 1D, 1E (Zones 4-5)

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays River, Elochomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers,

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of nine (9) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

**2. Blind Slough/Knappa Slough Select Area.**

a. SEASON: 7 p.m. August 25 to 7 a.m. August 26, 2009  
7 p.m. August 26 to 7 a.m. August 27, 2009

And Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009.

Open hours are 7 PM - 7 AM from August 25 through September 18 and 6 PM - 8 AM thereafter.

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

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered

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

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

**3. Tongue Point/South Channel Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

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

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

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

**4. Deep River Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, Thursday, and Friday nights from August 31 through October 31, 2009. Open 7 PM - 9 AM from August 31 through September 19 and 4 PM - 9 AM thereafter

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

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

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

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

**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.

REPEALER

The following section of the Washington Administrative Code is repealed:

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

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

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

**WSR 09-17-033**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-145—Filed August 10, 2009, 11:14 a.m., effective August 15,  
2009]

Effective Date of Rule: August 15, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-56-115.

Statutory Authority for Adoption: RCW 77.12.047 and  
77.04.020.

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

Reasons for this Finding: This rule will implement the two-pole endorsement that was recently established by the legislature. 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: August 10, 2009.

Philip Anderson  
Director

NEW SECTION

**WAC 220-56-11500F Angling gear—Law and unlawful acts.** Notwithstanding the provisions of WAC 220-56-115, effective August 15, 2009, until further notice, anglers who possess a valid two-pole endorsement may use up to two lines while fishing in lakes, ponds, and reservoirs open to fishing, except in the following waters:

AENEAS LAKE (Okanogan Co.)  
ALDWELL LAKE (Clallam Co.)  
AMBER LAKE (Spokane Co.)  
ANDERSON LAKE (Jefferson Co.)  
BAKER LAKE (Whatcom Co.)  
BAYLEY LAKE (Stevens Co.)  
BEAR LAKE (Spokane Co.)  
BEAVER LAKE (Clallam Co.)  
BEDA LAKE (Grant Co.)  
BIG FOUR LAKE (Columbia Co.)  
BIG TWIN LAKE (Okanogan Co.)  
BLACK LAKE (Okanogan Co.)  
BLACKBIRD ISLAND PD (Chelan Co.)  
BLUE LAKE (Cowlitz Co.)  
BLUE LAKE (Okanogan Co.) (near Wannacut Lake)  
BLUE LAKE (Okanogan Co.) (Sinlahekin Creek)  
BRADLEY LAKE (Pierce Co.)  
BROOKIES LAKES (Grant Co.)  
BROWNS LAKE (Pend Oreille Co.)  
BUMPING LAKE (RESERVOIR) (Yakima Co.)  
CADY LAKE (Mason Co.)  
CAMPBELL LAKE (Okanogan Co.)  
CARRIE BLAKE POND (Clallam Co.)  
CASES POND (Pacific Co.)  
CASTLE LAKE (Cowlitz Co.)  
CHOPAKA LAKE (Okanogan Co.)  
CLEAR LAKE (Yakima Co.)  
COFFEEDPOT LAKE (Lincoln Co.)  
COLDWATER LAKE (Cowlitz Co.)  
COLUMBIA PARK POND (Benton Co.)  
COUGAR LAKE (Okanogan Co.) (Lost River)  
COWLITZ FALLS RESERVOIR  
CUSHMAN RESERVOIR (Mason Co.)  
DAMON LAKE (Grays Harbor Co.)  
DAVIS LAKE (Okanogan Co.)  
DAYTON POND (Columbia Co.)  
DE COURSEY POND (Pierce Co.)  
DIABLO LAKE (Whatcom Co.)  
DICKEY LAKE (Clallam Co.)  
DRANO LAKE (Skamania Co.) (Little White Salmon River) downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Hwy. 14 Bridge  
DRY FALLS LAKE (Grant Co.)  
DUSTY LAKE (Grant Co.)  
EASTON LAKE (Kittitas Co.)  
EBEY LAKE (Snohomish Co.) (Little Lake)  
ELL LAKE (Okanogan Co.)  
FORT BORST PARK POND (Lewis Co.)  
FORTSON MILL POND #2 (Snohomish Co.)  
GARFIELD JUVENILE POND (Whitman Co.)  
GIBBS LAKE (Jefferson Co.)

GISSBURG POND, NORTH (Snohomish Co.)  
 GORGE LAKE (Whatcom Co.)  
 GRANITE LAKES (Skagit Co.) (near Marblemount)  
 GREEN LAKE (Okanogan Co.)  
 GREEN LAKE, LOWER (Okanogan Co.)  
 GRIMES LAKE (Douglas Co.)  
 HEADGATE POND (Asotin Co.)  
 Hidden LAKE (Okanogan Co.) (Lost River)  
 HOMESTEAD LAKE (Grant Co.)  
 HORSESHOE LAKE (Jefferson Co.)  
 JEFFERSON PARK POND (Walla Walla Co.)  
 JENNINGS PARK POND (Snohomish Co.)  
 KACHESS LAKE (RESERVOIR) (Kittitas Co.)  
 KEECHELUS LAKE (RESERVOIR) (Kittitas Co.)  
 KENNEDY CREEK POND (Thurston Co.)  
 KIWANIS POND (Kittitas Co.)  
 KOENEMAN LAKE (Kitsap Co.) (formerly Fern Lake)  
 LAKE WASHINGTON SHIP CANAL  
 LEECH LAKE (Yakima Co.) (White Pass area)  
 LENICE LAKE (Grant Co.)  
 LENORE LAKE (Grant Co.)  
 LEWIS RIVER POWER CANAL (Cowlitz Co.) and old Lewis River streambed between Swift No. 1 Powerhouse and Swift No. 2 Powerhouse  
 LINCOLN POND (Clallam Co.)  
 LIONS PARK POND (Walla Walla Co.) (College Place)  
 LONG LAKE (Ferry Co.)  
 LONG'S POND (Thurston Co.)  
 LUCKY DUCK POND (Stevens Co.)  
 MAYFIELD LAKE (RESERVOIR) (Lewis Co.) from Mayfield Dam to Mossyrock Dam  
 MCDOWELL LAKE (Stevens Co.)  
 MCLANE CREEK PONDS (Thurston Co.)  
 MEDICAL LAKE (Spokane Co.)  
 MERRILL LAKE (Cowlitz Co.)  
 MERRY LAKE (Grant Co.)  
 MIDDLE NEMAH POND (Pacific Co.)  
 MILL CREEK POND (Grays Harbor Co.)  
 MILL POND (King Co.) (Auburn)  
 MONTE CRISTO LAKE (Snohomish Co.)  
 MOOSES POND (Pacific Co.)  
 MUD LAKE (Yakima Co.)  
 MUNN LAKE (Thurston Co.)  
 MUSKEGON LAKE (Pend Oreille Co.)  
 MYRON LAKE (Yakima Co.)  
 NANEUM POND (Kittitas Co.)  
 NORTH SILVER LAKE (Spokane Co.)  
 NORTHERN STATE HOSPITAL POND (Skagit Co.)  
 NUNNALLY LAKE (Grant Co.)  
 OHOP LAKE (Pierce Co.)  
 OLD FISHING HOLE POND (King Co.) (Kent)  
 OWENS POND (Pacific Co.)  
 PACKWOOD LAKE (Lewis Co.)  
 PARA-JUVENILE LAKE (Grant/Adams Co.)  
 PASS LAKE (Skagit Co.)  
 PING POND (Grant Co.)  
 PIT LAKE (Douglas Co.)  
 PLEASANT, LAKE (Clallam Co.)  
 PORTAGE BAY (King Co.)  
 PRICES LAKE (Mason Co.)  
 PROMISED LAND POND (Grays Harbor Co.)  
 QUAIL LAKE (Adams Co.)  
 QUIGG LAKE - local name (Grays Harbor Co.) Located at Friends Landing near Montesano.  
 RAT LAKE (Okanogan Co.)  
 RATTLESNAKE LAKE (King Co.)  
 RAVENSDALE LAKE (King Co.)  
 RIGLEY LAKE (Stevens Co.)  
 RIMROCK LAKE (RESERVOIR) (Yakima Co.)  
 ROSS LAKE (RESERVOIR) (Whatcom Co.)  
 SALMON BAY  
 SAMMAMISH, LAKE (King Co.)  
 SARGE HUBBARD PARK POND (Yakima Co.)  
 SCANEWA LAKE (Lewis Co.) (Cowlitz Falls Reservoir)  
 SHYE LAKE (Grays Harbor Co.)  
 SILVER LAKE (Cowlitz Co.)  
 SILVERNAIL LAKE (Okanogan Co.)  
 SOUTH BEND MILL POND (Pacific Co.)  
 SPADA LAKE (RESERVOIR) (Snohomish Co.)  
 SQUALICUM LAKE (Whatcom Co.)  
 STUMP LAKE (Mason Co.)  
 SUTHERLAND LAKE (Clallam Co.)  
 SWANS MILL POND (King Co.)  
 SWIFT RESERVOIR (Skamania Co.) from dam to markers approximately 3/8 mile below Eagle Cliff Bridge  
 TANWAX LAKE (Pierce Co.)  
 TEAL LAKE (Jefferson Co.)  
 UNION, LAKE (King Co.)  
 VANCE CREEK POND #1 (Grays Harbor Co.)  
 VANCE CREEK POND #2 (Grays Harbor Co.)  
 VANCOUVER LAKE (Clark Co.) and all other waters west of Burlington-Northern Railroad from Columbia River draw-bridge near Vancouver downstream to Lewis River  
 VOGLER LAKE (Skagit Co.)  
 WALUPT LAKE (Lewis Co.)  
 WAPATO LAKE (Pierce Co.)  
 WASHINGTON SHIP CANAL, LAKE (King Co.) (including Lake Union, Portage Bay, and Salmon Bay) waters east of a north-south line 400' west of the Chittenden Locks to the Montlake Bridge  
 WASHINGTON, LAKE (King Co.) including that portion of Sammamish River from 68th Ave. NE Bridge downstream  
 WENATCHEE, LAKE (Chelan Co.)  
 WHATCOM, LAKE (Whatcom Co.) (See Department of Health Fish Consumption Advisories, page 32)  
 WILLAME LAKE (Lewis Co.)  
 WYNOOCHEE RESERVOIR (Grays Harbor Co.)  
 YAKIMA SPORTSMEN'S PARK PONDS (Yakima Co.)

**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 09-17-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-166—Filed August 10, 2009, 3:28 p.m., effective August 11, 2009, 9:21 p.m.]

Effective Date of Rule: August 11, 2009, 9:21 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 232-28-61900R.

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: Sockeye mortality, both substantial and unexpected, has occurred during migration up the Wenatchee River due to high water temperatures. Sufficient numbers of sockeye are not available to continue the Lake Wenatchee sport-fishing season. 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: August 10, 2009.

Philip Anderson  
 Director

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 9:21 p.m. August 11, 2009:

WAC 232-28-61900R	Exceptions to statewide rules—Lake Wenatchee. (09-150)
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**WSR 09-17-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-165—Filed August 10, 2009, 3:34 p.m., effective September 1, 2009, 12:01 a.m.]

Effective Date of Rule: September 1, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Yakama Nation (YN) has exclusive rights, secured by Article 3 of the Treaty of 1855, on the section of the Yakima River bordering the Yakama Reservation ("reservation boundary reach"). Washington department of fish and wildlife (WDFW) cannot legally open a salmon sport fishery in this reach without first securing concurrence with the YN. The YN has declined to open salmon sport fisheries in the boundary reach in 2009. 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: August 10, 2009.

Philip Anderson  
 Director

**NEW SECTION**

**WAC 232-28-61900Y Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 232-28-619, effective September 1 through October 22, 2009, it is unlawful to fish for salmon in waters of the Yakima River from the Highway 223 Bridge at Granger to Sunnyside (Parker) Dam. Night closure and anti-snagging restrictions are not in effect at this time for all game fish species.

REPEALER

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

WAC 232-28-61900Y Exceptions statewide rules—  
Yakima River.

**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 09-17-050**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 09-168—Filed August 12, 2009, 1:10 p.m., effective August 12,  
2009, 1:10 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the pot fishery season in Shrimp Management Area 1A and Catch Areas 23A-C, 23A-W, 23B and 26D because the spot shrimp quotas there have been harvested. In addition, the weekly spot shrimp limits have been lowered in several catch areas to reduce catch rates and help prevent overharvest of the quotas. 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: August 12, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-C and the Discovery Bay Shrimp District are closed.

(ii) Effective immediately, until further notice, all waters of Shrimp Management Areas 1B, 1C, 2E and 2W are closed to the harvest of spot shrimp.

(iii) Effective 11:59 p.m. August 16, 2009, until further notice, all waters of Catch Areas 23B and 26D are closed to the harvest of spot shrimp.

(iv) Effective 11:59 p.m. August 16, 2009, all waters of Shrimp Management Area 1A and Catch Area 23A-W are closed to the harvest of all shrimp species, except that those waters of Shrimp Management Area 1A south of line projected at 48° 31.5' N latitude are open to the harvest of all species except spot shrimp.

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

(c) Effective immediately, until 11:59 p.m. August 16, 2009, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 250 pounds per week in Shrimp Management Area 1A, 300 pounds per week in Catch Area 23A-W, and 200 pounds per week in Catch Area 23B.

(d) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 350 pounds per week in Catch Area 25A. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

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

(2) Shrimp beam trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open immediately until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is open immediately until further notice.

(d) All waters of Catch Area 20A are open immediately until further notice.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100U Puget Sound shrimp pot and beam trawl fishery—Season. (09-161)

**WSR 09-17-051  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-169—Filed August 12, 2009, 3:27 p.m., effective August 12, 2009, 3:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-010, 220-36-03001, 220-40-030, 220-44-020, and 220-69-240.

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: Since the inception of the baitfish fishery in 1989, landings of anchovies have averaged 240,000 pounds annually. The highest landings occurred in 2002, with 500,000 pounds of anchovies landed that year. Preliminary data indicates that an excess of one million pounds of anchovies has been landed to date. This action is

recommended for conservation of the anchovy resource. The 20% restriction on sardines is to bring consistency with federal rules for the incidental harvest of sardines in the anchovy fishery. 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 5, 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: August 12, 2009.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-20-01000E General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish.** Notwithstanding the provisions of WAC 220-20-010, effective immediately until further notice, it is unlawful to use anchovies for purposes other than human consumption or fishing bait, except as provided for in WAC 220-36-03001, WAC 220-40-030 and WAC 220-44-020.

#### NEW SECTION

**WAC 220-36-03001A Grays Harbor—Seasons and lawful gear—Varieties other than salmon and sturgeon.** Notwithstanding the provisions of WAC 220-36-03001, effective immediately until further notice, it is unlawful:

(1) To deliver more than fifteen percent cumulative weight of anchovies for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or fishing bait during the anchovy fishery season.

(2) For any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver to a place or port, anchovies in excess of 10 metric tons (22,046 pounds) taken during any calendar week beginning 12:01 am Sunday through 11:59 pm Saturday.

(3) For any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver to a place or port, sardines in excess of twenty percent of the weight of the landing.



NEW SECTION

**WAC 220-40-03000A Willapa Bay—Seasons and lawful gear—Varieties other than salmon and sturgeon.** Notwithstanding the provisions of WAC 220-36-030, effective immediately until further notice, it is unlawful:

(1) To deliver more than fifteen percent cumulative weight of anchovies for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or fishing bait during the anchovy fishery season.

(2) For any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver to a place or port, anchovies in excess of 10 metric tons (22,046 pounds) taken during any calendar week beginning 12:01 am Sunday through 11:59 pm Saturday.

(3) For any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver to a place or port, sardines in excess of twenty percent of the weight of the landing.

NEW SECTION

**WAC 220-44-02000C Coastal baitfish gear.** Notwithstanding the provisions of WAC 220-44-020, effective immediately until further notice, it is unlawful:

(1) To deliver more than fifteen percent cumulative weight of anchovies for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or fishing bait during the anchovy fishery season.

(2) For any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver to a place or port, anchovy in excess of 10 metric tons (22,046 pounds) taken during any calendar week beginning 12:01 am Sunday through 11:59 pm Saturday.

(3) For any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver to a place or port, sardines in excess of twenty percent of the weight of the landing.

NEW SECTION

**WAC 220-69-24000Q Duties of commercial purchasers and receivers.** Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, the amount of anchovies, by weight, purchased for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or by-products for purposes other than human consumption or fishing bait, must be included on the fish ticket as "reduction."

**WSR 09-17-067****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 09-171—Filed August 13, 2009, 1:41 p.m., effective August 15, 2009]

Effective Date of Rule: August 15, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-56-123.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule allows anglers with a two-pole endorsement to use up to three hooks on each line. The two-pole endorsement was recently established by the legislature. 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: August 13, 2009.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-56-12300B Statewide freshwater hook rules.** Notwithstanding the provisions of WAC 220-56-123, effective August 15, 2009, until further notice, it is unlawful to use more than three hooks to fish in freshwater, except that anglers with a valid two-pole endorsement may use up to three hooks on each line.

**WSR 09-17-073****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 09-172—Filed August 14, 2009, 11:16 a.m., effective August 16, 2009, 9:00 p.m.]

Effective Date of Rule: August 16, 2009, 9:00 p.m.

Purpose: Amend personal use fishing rules.

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

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 state recreational share of spot shrimp has been taken in Marine Area 6. The spot shrimp fishery will be closed on September 16 in Marine Areas 4 and 5 to protect spot shrimp during the onset of the egg-bearing period. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 14, 2009.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

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

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 6, 7 and 13 except as provided for in this section;

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

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

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

b. Marine Areas 6 and 13 are open to the harvest of all shrimp species except Spot shrimp. It is unlawful to possess Spot shrimp, and all Spot shrimp must be immediately returned to the water unharmed.

2) Effective immediately until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species

except Spot shrimp. All Spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

3) Effective 11:59 p.m. September 15, 2009, until further notice, all waters of Marine Area 4 east of the Bonilla-Tatoosh line and Marine Area 5 are open to the harvest of all shrimp species except Spot shrimp. It is unlawful to possess Spot shrimp, and all Spot shrimp must be immediately returned to the water unharmed.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. August 16, 2009:

WAC 220-56-32500P      Shrimp—Areas and seasons  
(09-100)

The following section of the Washington Administrative Code is repealed effective October 16, 2009:

WAC 220-56-32500Q      Shrimp—Areas and seasons.

**WSR 09-17-108  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-174—Filed August 18, 2009, 10:41 a.m., effective August 18, 2009, 10:41 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the pot fishery season in Catch Area 25A because the spot shrimp quota there has been harvested. In addition, the weekly spot shrimp limits have been lowered in several catch areas to reduce catch rates and help prevent overharvest of the quotas. 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: August 18, 2009.

Lori Preuss  
for Philip Anderson  
Director

### NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of Catch Areas 23A-E, 23A-C, 23A-W and the Discovery Bay Shrimp District are closed.

(ii) Effective immediately, until further notice, all waters of Shrimp Management Areas 1B, 1C, 2E, 2W, and Catch Areas 23B and 26D, are closed to the harvest of spot shrimp.

(iii) Effective 11:59 p.m. August 23, 2009, until further notice, all waters of Catch Area 25A are closed to the harvest of spot shrimp.

(iv) Effective immediately, until further notice, all waters of Shrimp Management Area 1A are closed to the harvest of all shrimp species, except that those waters of Shrimp Management Area 1A south of line projected at 48°31.5' N latitude are open to the harvest of all species except spot shrimp.

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

(c) Effective immediately, until 11:59 p.m. August 23, 2009, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds per week in Catch Area 25A.

(d) Effective until 11:59 p.m. August 23, 2009, until further notice, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 350 pounds per week in Catch Areas 23A-S/23D, or to exceed 250 lbs per week in Catch Area 23C.

(e) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week. It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(f) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Manage-

ment and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

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

(2) Shrimp beam trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open immediately until further notice.

(c) That portion of Catch Area 21A within Shrimp Management Area 1B is open immediately until further notice.

(d) All waters of Catch Area 20A are open immediately until further notice.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100V	Puget Sound shrimp pot and beam trawl fishery—Season. (09-168)
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### **WSR 09-17-134**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF HEALTH**

[Filed August 19, 2009, 10:56 a.m., effective September 1, 2009]

Effective Date of Rule: September 1, 2009.

Purpose: To provide for temporary practice permits to be issued to applicants for licensure in a profession listed in RCW 18.130.040 (2)(a) while a fingerprint-based national background check is completed. The process to complete the national background check is lengthy and has caused licensing delays that affect the public's access to health care. The department will issue a temporary practice permit to applicants who meet all other licensing requirements and qualifications, and the profession does not currently prohibit temporary practice permits by statute or rule. The department will

complete permanent rule making for temporary practice permits.

Statutory Authority for Adoption: RCW 18.130.064, 18.130.075.

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

Reasons for this Finding: Delays in licensing for qualified applicants affects patient safety and impacts a patient's access to care. This rule qualifies for emergency rule making for the preservation of the public health, safety, and general welfare of the citizens of Washington state.

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

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

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

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

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

Date Adopted: August 19, 2009.

Mary C. Selecky  
Secretary

#### NEW SECTION

**WAC 246-12-050 Temporary practice permits.** Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed. This section applies to any profession listed in RCW 18.130.040 (2)(a) that does not currently issue a temporary practice permit under the profession's specific statute or rule, unless the profession prohibits temporary practice permits by statute or rule.

(1) A temporary practice permit may be issued to an applicant who holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington and is not subject to denial of a license or issuance of a conditional or restricted license.

(2) A temporary practice permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit automatically expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for the profession in Washington.

(d) Submit a written request for a temporary practice permit.

**WSR 09-17-135  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 09-175—Filed August 19, 2009, 11:14 a.m., effective August 24, 2009, 6:00 a.m.]

Effective Date of Rule: August 24, 2009, 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. 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 220-32-05100T; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the first three weekly fishing periods for the 2009 fall season. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action

of the Columbia River compact on May 26 and August 18, 2009. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: August 19, 2009.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-32-05100U Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, except as provided in the following subsections; and the same prohibitions apply in the Wind River, White Salmon River, and Klickitat River, except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

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

a) SEASON: 6:00 AM August 24 to 6:00 PM August 27, 2009

6:00 AM August 31 to 6:00 PM September 4, 2009

6:00 AM September 8 to 6:00 PM September 12, 2009

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

c) GEAR: Gillnet, no minimum mesh size restriction.

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

a) SEASON: Immediately until further notice.

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

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

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

a) SEASON: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform/hook and line gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: White Salmon, and Klickitat and Wind rivers.

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

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

a) SEASON: Immediately until further notice, and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam" and only for enrolled Yakama Nation members in areas that have either commercial gillnet openings or allow platform/hook and line gear in Zone 6 (SMCRA 1F, 1G, 1H).

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

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

**5. SANCTUARIES:** Standard river mouth and dam sanctuaries applicable to these gear types, including the Spring Creek Hatchery sanctuary.

**6. ALLOWABLE SALES:** Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad may

be sold or retained for subsistence. Sturgeon may not be sold, Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Sturgeon caught below Bonneville Dam may **NOT** be retained and may **NOT** be sold. Fish may **NOT** be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. August 24, 2009:

WAC 220-32-05100T      Columbia River salmon seasons above Bonneville Dam. (09-158)