

WSR 10-02-041
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 30, 2009, 10:38 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: These rules develop reimbursement rules and define the requirements that must be met for a reimbursable skilled nursing visit when services are rendered without a face-to-face visit and are assisted by telemedicine.

Citation of Existing Rules Affected by this Order: Amending WAC 388-551-2000, 388-551-2010, 388-551-2020, 388-551-2030, 388-551-2100, 388-551-2110, 388-551-2120, 388-551-2130, 388-551-2200, 388-551-2210, and 388-551-2220.

Statutory Authority for Adoption: RCW 74.08.090, chapter 74.09 RCW, and chapter 326, Laws of 2009 (SHB 1529).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Amendments to these sections are required to implement chapter 326, Laws of 2009 (SHB 1529) which authorizes delivery of home health care services through telemedicine.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 11, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 11, Repealed 0.

Date Adopted: December 22, 2009.

Don Goldsby, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2000 Home health services—General.

The purpose of the (~~medical assistance administration (MAA))~~ department's home health program is to reduce the costs of health care services by providing equally effective, less restrictive quality care to the client in the client's residence, subject to the restrictions and limitations in this subchapter.

Home health skilled services are provided for acute, intermittent, short-term, and intensive courses of treatment. See chapters 388-515 and 388-71 WAC for programs admin-

istered to clients who need chronic, long-term maintenance care.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2010 Home health services—Definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this subchapter:

"Acute care" means care provided by a home health agency for clients who are not medically stable or have not attained a satisfactory level of rehabilitation. These clients require frequent intervention by a registered nurse or licensed therapist.

"Brief skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs only one of the following activities during a visit to a client:

- (1) An injection;
- (2) Blood draw; or
- (3) Placement of medications in containers.

"Chronic care" means long-term care for medically stable clients.

"Full skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs one or more of the following activities during a visit to a client:

- (1) Observation;
- (2) Assessment;
- (3) Treatment;
- (4) Teaching;
- (5) Training;
- (6) Management; and
- (7) Evaluation.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on an intermittent or part-time basis to a patient in the patient's place of residence.

"Home health aide" means an individual registered or certified as a nursing assistant under chapter 18.88 RCW who, under the direction and supervision of a registered nurse or licensed therapist, assists in the delivery of nursing or therapy related activities, or both.

"Home health aide services" means services provided by a home health aide only when a client has an acute, intermittent, short-term need for the services of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract with a home health agency. Such services are provided under the supervision of the previously identified authorized practitioners and include, but are not limited to, ambulation and exercise, assistance with self-administered medications, reporting changes in a client's condition and needs, and completing appropriate records.

"Home health skilled services" means skilled health care (nursing, specialized therapy, and home health aide) services provided in the client's residence on an intermittent or part-time basis by a medicare-certified home health agency with a current (~~medical assistance administration (MAA))~~ provider number. See also WAC 388-551-2000.

"**Long-term care**" is a generic term referring to various programs and services, including services provided in home and community settings, administered directly or through contract by the department's aging and ~~((adult))~~ disability services administration ~~((AASA))~~ (ADSA) or division of developmental disabilities (DDD).

"**Plan of care (POC)**" (also known as "**plan of treatment (POT)**") means a written plan of care that is established and periodically reviewed and signed by both ~~((a physician))~~ an ordering licensed practitioner and a home health agency provider. The plan describes the home health care to be provided at the client's residence. See WAC 388-551-2210.

"**Residence**" means a client's home or place of living. (See WAC 388-551-2030 (2)(g)(ii) for clients in residential facilities whose home health services are not covered through ~~((MAA's))~~ department's home health program.)

"**Review period**" means the three-month period the ~~((medical assistance administration (MAA)))~~ department assigns to a home health agency, based on the address of the agency's main office, during which ~~((MAA))~~ the department reviews all claims submitted by that agency.

"**Specialized therapy**" means skilled therapy services provided to clients that include:

- (1) Physical;
- (2) Occupational; or
- (3) Speech/audiology services.

(See WAC 388-551-2110.)

"**Telemedicine**" - For the purposes of WAC 388-551-2000 through 388-551-2220, means the use of telemonitoring to enhance the delivery of certain home health skilled nursing services through:

- (1) The collection of clinical data and the transmission of such data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry; or
- (2) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2020 Home health services—Eligible clients. (1) Clients in the following fee-for-service ~~((MAA))~~ programs are eligible to receive home health services subject to the limitations described in this chapter. Clients enrolled in a healthy options managed care plan receive all home health services through their designated plan.

- (a) Categorically needy program (CNP);
- (b) Limited casualty program - medically needy program (LCP-MNP);
- (c) General assistance expedited (GA-X) (disability determination pending); and
- (d) Medical care services (MCS) under the following programs:
 - (i) General assistance - unemployable (GA-U); and

- (ii) Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) (GA-W).

(2) ~~((MAA))~~ The department does not cover home health services under the home health program for clients in the CNP-emergency medical only and LCP-MNP-emergency medical only programs. ~~((MAA))~~ The department evaluates a request for home health skilled nursing visits on a case-by-case basis under the provisions of WAC 388-501-0165, and may cover up to two skilled nursing visits within the eligibility enrollment period if the following criteria are met:

(a) The client requires hospital care due to an emergent medical condition as described in WAC 388-500-0005; and

(b) ~~((MAA))~~ The department authorizes up to two skilled nursing visits for follow-up care related to the emergent medical condition.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2030 Home health skilled services—Requirements. (1) ~~((MAA))~~ The department reimburses for covered home health skilled services provided to eligible clients, subject to the restrictions or limitations in this section and other applicable published WAC.

(2) Home health skilled services provided to eligible clients must:

(a) Meet the definition of "acute care" in WAC 388-551-2010.

(b) Provide for the treatment of an illness, injury, or disability.

(c) Be medically necessary as defined in WAC 388-500-0005.

(d) Be reasonable, based on the community standard of care, in amount, duration, and frequency.

(e) Be provided under a plan of care (POC), as defined in WAC 388-551-2010 and described in WAC 388-551-2210. Any statement in the POC must be supported by documentation in the client's medical records.

(f) Be used to prevent placement in a more restrictive setting. In addition, the client's medical records must justify the medical reason(s) that the services should be provided in the client's residence instead of ~~((a physician's))~~ an ordering licensed practitioner's office, clinic, or other outpatient setting. This includes justification for services for a client's medical condition that requires teaching that would be most effectively accomplished in the client's home on a short-term basis.

(g) Be provided in the client's residence.

(i) ~~((MAA))~~ The department does not reimburse for services if provided at the workplace, school, child day care, adult day care, skilled nursing facility, or any other place that is not the client's place of residence.

(ii) Clients in residential facilities contracted with the state and paid by other programs such as home and community programs to provide limited skilled nursing services, are not eligible for ~~((MAA))~~ department-funded limited skilled nursing services unless the services are prior authorized under the provisions of WAC 388-501-0165.

(h) Be provided by:

(i) A home health agency that is Title XVIII (medicare) certified;

(ii) A registered nurse (RN) prior authorized by ~~((MAA))~~ the department when no home health agency exists in the area a client resides; or

(iii) An RN authorized by ~~((MAA))~~ the department when the RN is unable to contract with a medicare-certified home health agency.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2100 ~~((Covered))~~ Home health services—Covered skilled nursing services. (1) ~~((MAA))~~ The department covers home health acute care skilled nursing services listed in this section when furnished by a qualified provider. ~~((MAA))~~ The department evaluates a request for covered services that are subject to limitations or restrictions, and approves such services beyond those limitations or restrictions when medically necessary, under the standard for covered services in WAC 388-501-0165.

(2) ~~((MAA))~~ The department covers the following home health acute care skilled nursing services, subject to the limitations in this section:

(a) Full skilled nursing services that require the skills of a registered nurse or a licensed practical nurse under the supervision of a registered nurse, if the services involve one or more of the following:

- (i) Observation;
- (ii) Assessment;
- (iii) Treatment;
- (iv) Teaching;
- (v) Training;
- (vi) Management; and
- (vii) Evaluation.

(b) A brief skilled nursing visit if only one of the following activities is performed during the visit:

- (i) An injection;
- (ii) Blood draw; or
- (iii) Placement of medications in containers (e.g., envelopes, cups, medisets).

(c) Home infusion therapy only if the client:

- (i) Is willing and capable of learning and managing the client's infusion care; or
- (ii) Has a volunteer caregiver willing and capable of learning and managing the client's infusion care.

(d) Infant phototherapy for an infant diagnosed with hyperbilirubinemia:

- (i) When provided by ~~((an MAA-approved))~~ a department-approved infant phototherapy agency; and
 - (ii) For up to five skilled nursing visits per infant.
- (e) Limited high-risk obstetrical services:
- (i) For a medical diagnosis that complicates pregnancy and may result in a poor outcome for the mother, unborn, or newborn;
 - (ii) For up to three home health visits per pregnancy if:
 - (A) Enrollment in or referral to the following providers of first steps has been verified:
 - (I) Maternity support services (MSS); or

(II) Maternity case management (MCM); and

(B) The visits are provided by a registered nurse who has either:

(I) National perinatal certification; or

(II) A minimum of one year of labor, delivery, and postpartum experience at a hospital within the last five years.

(3) ~~((MAA))~~ The department limits skilled nursing visits provided to eligible clients to two per day.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2110 Home health services—Covered specialized therapy. (1) ~~((MAA))~~ The department limits specialized therapy visits to one per client, per day, per type of specialized therapy. Specialized therapy is defined in WAC 388-551-2010.

(2) ~~((MAA))~~ The department does not allow duplicate services for any specialized therapy for the same client when both providers are performing the same or similar procedure(s).

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2120 Home health services—Covered aide services. (1) ~~((MAA limits))~~ The department pays for one home health aide ~~((visits to one))~~ visit per client per day.

(2) ~~((MAA))~~ The department reimburses for home health aide services, as defined in WAC 388-551-2010, only when the services are provided under the supervision of, and in conjunction with, practitioners who provide:

- (a) Skilled nursing services; or
- (b) Specialized therapy services.

(3) ~~((MAA))~~ The department covers home health aide services only when a registered nurse or licensed therapist visits the client's residence at least once every fourteen days to monitor or supervise home health aide services, with or without the presence of the home health aide.

NEW SECTION

WAC 388-551-2125 Home health services—Delivered through telemedicine. (1) The department covers the delivery of home health services through telemedicine for clients who have been diagnosed with an unstable condition who may be at risk for hospitalization or a more costly level of care. The client must have a diagnosis(es) where there is a high risk of sudden change in clinical status which could compromise health outcomes.

(2) The department pays for one telemedicine interaction, per eligible client, per day based on the ordering licensed practitioner's home health plan of care.

(3) To receive payment for the delivery of home health services through telemedicine, the services must involve:

(a) An assessment, problem identification, and evaluation which includes:

(i) Assessment and monitoring of clinical data including, but not limited to, vital signs, pain levels and other biometric measures specified in the plan of care. Also includes assessment of response to previous changes in the plan of care; and

(ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care; and

(b) Implementation of a management plan through one or more of the following:

(i) Teaching regarding medication management as appropriate based on the telemedicine findings for that encounter;

(ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;

(iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;

(iv) Coordination of care with the ordering licensed provider regarding telemedicine findings;

(v) Coordination and referral to other medical providers as needed; and

(vi) Referral to the emergency room as needed.

(4) The department does not require prior authorization for the delivery of home health services through telemedicine.

(5) The department does not pay for the purchase, rental, or repair of telemedicine equipment.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-551-2130 (~~Noncovered~~) Home health services—~~Noncovered services~~. (1) The (~~Health and Recovery Services Administration (HRSA)~~) department does not cover the following home health services under the home health program, unless otherwise specified:

(a) Chronic long-term care skilled nursing visits or specialized therapy visits for a medically stable client when a long-term care skilled nursing plan or specialized therapy plan is in place through the department of social and health services' aging and disability services administration (ADSA).

(i) (~~HRSA~~) The department considers requests for interim chronic long-term care skilled nursing services or specialized therapy services for a client while the client is waiting for ADSA to implement a long-term care skilled nursing plan or specialized therapy plan; and

(ii) On a case-by-case basis, (~~HRSA~~) the department may authorize long-term care skilled nursing visits or specialized therapy visits for a client for a limited time until a long-term care skilled nursing plan or specialized therapy plan is in place. Any services authorized are subject to the restrictions and limitations in this section and other applicable published WACs.

(b) Social work services.

(c) Psychiatric skilled nursing services.

(d) Pre- and postnatal skilled nursing services, except as listed under WAC 388-551-2100 (2)(e).

(e) Well-baby follow-up care.

(f) Services performed in hospitals, correctional facilities, skilled nursing facilities, or a residential facility with skilled nursing services available.

(g) Home health aide services that are not provided in conjunction with skilled nursing or specialized therapy services.

(h) Health care for a medically stable client (e.g., one who does not have an acute episode, a disease exacerbation, or treatment change).

(i) Home health specialized therapies and home health aide visits for clients in the following programs:

(i) CNP - emergency medical only; and

(ii) LCP-MNP - emergency medical only.

(j) Skilled nursing visits for a client when a home health agency cannot safely meet the medical needs of that client within home health services program limitations (e.g., for a client to receive infusion therapy services, the caregiver must be willing and capable of managing the client's care).

(k) More than one of the same type of specialized therapy and/or home health aide visit per day.

(l) HRSA does not reimburse for duplicate services for any specialized therapy for the same client when both providers are performing the same or similar procedure(s).

(m) Home health visits made without a written (~~physician's~~) licensed practitioner's order, unless the verbal order is:

(i) Documented prior to the visit; and

(ii) The document is signed by the (~~physician~~) ordering licensed practitioner within forty-five days of the order being given.

(2) HRSA does not cover additional administrative costs billed above the visit rate (these costs are included in the visit rate and will not be paid separately).

(3) HRSA evaluates a request for any service that is listed as noncovered under the provisions of WAC 388-501-0160.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2200 Home health services—Eligible providers. The following may contract with (~~MAA~~) the department to provide home health services through the home health program, subject to the restrictions or limitations in this section and other applicable published WAC:

(1) A home health agency that:

(a) Is Title XVIII (medicare) certified;

(b) Is department of health (DOH) licensed as a home health agency;

(c) Submits a completed, signed core provider agreement to (~~MAA~~) the department; and

(d) Is assigned a provider number.

(2) A registered nurse (RN) who:

(a) Is prior authorized by (~~MAA~~) the department to provide intermittent nursing services when no home health agency exists in the area a client resides;

(b) Is unable to contract with a medicare-certified home health agency;

(c) Submits a completed, signed core provider agreement to (~~MAA~~) the department; and

(d) Is assigned a provider number.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2210 Home health services—Provider requirements. For any delivered home health service to be payable, ~~((MAA))~~ the department requires home health providers to develop and implement an individualized plan of care (POC) for the client.

- (1) The POC must:
 - (a) Be documented in writing and be located in the client's home health medical record;
 - (b) Be developed, supervised, and signed by a licensed registered nurse or licensed therapist;
 - (c) Reflect the ~~((physician's))~~ ordering licensed practitioner's orders and client's current health status;
 - (d) Contain specific goals and treatment plans;
 - (e) Be reviewed and revised by ~~((a physician))~~ an ordering licensed practitioner at least every sixty calendar days, signed by ~~((a physician))~~ the ordering licensed practitioner within forty-five days of the verbal order, and returned to the home health agency's file; and
 - (f) Be available to department staff or its designated contractor(s) on request.
- (2) The provider must include in the POC all of the following:
 - (a) The client's name, date of birth, and address (to include name of residential care facility, if applicable);
 - (b) The primary diagnosis (the diagnosis that is most related to the reason the client qualifies for home health services) or the diagnosis that is the reason for the visit frequency;
 - (c) All secondary medical diagnoses, including date(s) of onset or exacerbation;
 - (d) The prognosis;
 - (e) The type(s) of equipment required;
 - (f) A description of each planned service and goals related to the services provided;
 - (g) Specific procedures and modalities;
 - (h) A description of the client's mental status;
 - (i) A description of the client's rehabilitation potential;
 - (j) A list of permitted activities;
 - (k) A list of safety measures taken on behalf of the client; and
 - (l) A list of medications which indicates:
 - (i) Any new prescription; and
 - (ii) Which medications are changed for dosage or route of administration.
- (3) The provider must include in or attach to the POC:
 - (a) A description of the client's functional limits and the effects;
 - (b) Documentation that justifies why the medical services should be provided in the client's residence instead of ~~((a physician's))~~ an ordering licensed practitioner's office, clinic, or other outpatient setting;
 - (c) Significant clinical findings;
 - (d) Dates of recent hospitalization;
 - (e) Notification to the DSHS case manager of admittance; ~~((and))~~
 - (f) A discharge plan, including notification to the DSHS case manager of the planned discharge date and client disposition at time of discharge; and

(g) Order for the delivery of home health services through telemedicine, as appropriate.

- (4) The individual client medical record must comply with community standards of practice, and must include documentation of:
 - (a) Visit notes for every billed visit;
 - (b) Supervisory visits for home health aide services as described in WAC 388-551-2120(3);
 - (c) All medications administered and treatments provided;
 - (d) All ~~((physician))~~ licensed practitioner's orders, new orders, and change orders, with notation that the order was received prior to treatment;
 - (e) Signed ~~((physician))~~ licensed practitioner's new orders and change orders;
 - (f) Home health aide services as indicated by a registered nurse or licensed therapist in a home health aide care plan;
 - (g) Interdisciplinary and multidisciplinary team communications;
 - (h) Inter-agency and intra-agency referrals;
 - (i) Medical tests and results;
 - (j) Pertinent medical history; and
 - (k) Notations and charting with signature and title of writer.
- (5) The provider must document at least the following in the client's medical record:
 - (a) Skilled interventions per the POC;
 - (b) Client response to the POC;
 - (c) Any clinical change in client status;
 - (d) Follow-up interventions specific to a change in status with significant clinical findings; and
 - (e) Any communications with the attending ~~((physician))~~ ordering licensed practitioner.
- (6) The provider must include the following documentation in the client's visit notes when appropriate:
 - (a) Any teaching, assessment, management, evaluation, client compliance, and client response;
 - (b) Weekly documentation of wound care, size (dimensions), drainage, color, odor, and identification of potential complications and interventions provided;
 - (c) If a client's wound is not healing, the client's ~~((physician))~~ ordering licensed practitioner has been notified, the client's wound management program has been appropriately altered and, if possible, the client has been referred to a wound care specialist; and
 - (d) The client's physical system assessment as identified in the POC.

AMENDATORY SECTION (Amending WSR 02-15-082, filed 7/15/02, effective 8/15/02)

WAC 388-551-2220 Home health services—Provider payments. (1) In order to be reimbursed, the home health provider must bill ~~((MAA))~~ the department according to the conditions of payment under WAC 388-502-0150 and other issuances.

- (2) Payment to home health providers is:
 - (a) A set rate per visit for each discipline provided to a client;

(b) Based on the county location of the providing home health agency; and

(c) Updated by general vendor rate changes.

(3) For clients eligible for both medicaid and medicare, ~~((MAA))~~ the department may pay for services described in this chapter only when medicare does not cover those services. The maximum payment for each service is medicaid's maximum payment.

(4) Providers must submit documentation to ~~((MAA))~~ the department during the home health agency's review period. Documentation includes, but is not limited to, the requirements listed in WAC 388-551-2210.

(5) After ~~((MAA))~~ the department receives the documentation, the ~~((MAA))~~ department's medical director or designee reviews the client's medical records for program compliance and quality of care.

(6) ~~((MAA))~~ The department may take back or deny payment for any insufficiently documented home health care service when the ~~((MAA))~~ department's medical director or designee determines that:

(a) The service did not meet the conditions described in WAC 388-550-2030; or

(b) The service was not in compliance with program policy.

(7) Covered home health services for clients enrolled in a Healthy Options managed care plan are paid for by that plan.

WSR 10-03-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-02—Filed January 6, 2010, 2:22 p.m., effective January 13, 2010, 7:00 p.m.]

Effective Date of Rule: January 13, 2010, 7:00 p.m.

Purpose: Commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.70.430.

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: State crab harvest has reached agreed upon regional quotas and this closure complies with the state/treaty management plan for this region. 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: January 6, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04600N Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective 7:00 p.m. January 13, 2010 until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Crab Management Region 2 East (Marine Fish Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A East).

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. January 13, 2010:

WAC 220-52-04600L	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (09-263)
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WSR 10-03-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-04—Filed January 6, 2010, 3:36 p.m., effective January 9, 2010]

Effective Date of Rule: January 9, 2010.

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: Based on spawner survey and harvest information available to date, Washington department of fish and wildlife (WDFW) is concerned that the winter chum return to the Nisqually River is not as abundant as forecast and has the potential to fall short of our escapement goal. Given this information and the need to achieve our

shared conservation goals both WDFW and the Nisqually Tribe are closing their respective fisheries for chum salmon. There is insufficient time to adopt permanent rules.

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

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Date Adopted: January 6, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Nisqually River. Notwithstanding the provisions of WAC 232-28-619, effective January 9 through January 31, 2010, it is unlawful to fish in waters of the Nisqually River from the mouth to the military tank crossing bridge.

REPEALER

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

WAC 232-8-61900L Exceptions to statewide rules—Nisqually River.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 232-8-61900L is probably intended to be WAC 232-28-61900L.

**WSR 10-03-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-01—Filed January 7, 2010, 1:30 p.m., effective January 11, 2010]

Effective Date of Rule: January 11, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350.

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: Surveys indicate that the hard-shell clam population at Belfair State Park will not support a recreational season in 2010. 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: January 7, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-35000H Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective January 11, 2010 until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from Belfair State Park.

**WSR 10-03-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-05—Filed January 7, 2010, 2:22 p.m., effective January 10, 2010]

Effective Date of Rule: January 10, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900J; 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 closure of the fishery on the Cascade River was necessary in order to collect sufficient fish to meet broodstock. The hatchery winter steelhead

broodstock collection has now been achieved so an emergency rule is needed to reopen the river.

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: January 7, 2010.

Lori Preuss
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective January 10, 2010:

WAC 232-28-61900J Exceptions to statewide rules—Cascade River. (09-265)

WSR 10-03-020 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-07—Filed January 8, 2010, 10:53 a.m., effective January 8, 2010, 10:53 a.m.]

Effective Date of Rule: Immediately.

Purpose: Commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.70.430.

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: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 8, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000P Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean through January 31, 2010, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel hold inspection certificates dated from November 30, 2009, to December 25, 2009 are only valid for the area south of 46°28.00.

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through January 31, 2010.

NEW SECTION

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

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) Vessels that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from:

a. Fishing in the area between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 A.M., January 12, 2010.

b. Fishing in the area between Oysterville (46°33.00) and Destruction Island (47°40.50') until 8:00 A.M., February 6, 2010.

c. Fishing in the area from Destruction Island (47°40.50) to the U.S./Canada border until 8:00 A.M., February 6, 2010.

(4) It is permissible to pull crab gear in the area between Klipsan Beach and Destruction Island and Grays Harbor.

(5) It is permissible to pull crab gear in the area between Destruction Island and the U.S./Canada Border beginning at 12:01 A.M. January 15, 2010.

(6) The Quinalt primary special management area (PSMA) is closed to fishing for Dungeness crab until 8:00 A.M. March 1, 2010. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

Northeast Corner (Raft River):	47°28.00 N. Lat.	124°20.70 W. Lon.
Northwest Corner:	47°28.00 N. Lat.	124°34.00 W. Lon.
Southwest Corner:	47°08.00 N. Lat.	124°25.50 W. Lon.
Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(7) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- Northeast Corner (Cape Johnson) 47°58.00' N. Lat. 124°40.40' W. Lon.
- Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(8) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- Northeast Corner (Tatoosh Island):
- Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.
- Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.
- Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04000N	Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (09-277)
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WAC 220-52-04600M Coastal crab seasons (09-277)

**WSR 10-03-021
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed January 8, 2010, 1:31 p.m., effective January 8, 2010, 1:31 p.m.]

Effective Date of Rule: Immediately.

Purpose: These emergency rules are necessary to remove medicare cost savings from estate recovery and also allow for future implementation of the long-term care (LTC) partnership agreement which will permit clients to protect assets or resources from both eligibility for LTC services and from estate recovery at the time of death through the purchase of a qualified LTC partnership agreement insurance policy.

Citation of Existing Rules Affected by this Order: Amending WAC 388-527-2733 and 388-527-2742.

Statutory Authority for Adoption: 42 U.S.C. 1396p (b)(1)(B)(ii), P.L. 109-171 (the Deficit Reduction Act of 2005).

Other Authority: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These emergency rules are necessary to comply with rule changes enacted under the 2008 Medicare Improvements for Patients and Providers Act which amended Section 1917 (b)(1)(B)(ii) of the Social Security Act to eliminate medicare cost-sharing expenses from estate recovery; and to incorporate language regarding LTC partnership agreements approved under the Deficit Reduction Act of 2005. This emergency rule supersedes the emergency filed as WSR 10-02-040. The permanent rule-making process is currently at external review and the department plans to file the CR-102 in January 2010.

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

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

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

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

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

Date Adopted: January 6, 2010.

Don Goldsby, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2733 Estate liability. (1) The client's estate is not liable for services provided before July 26, 1987.

(2) The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

- (a) A surviving spouse; or
- (b) A surviving child who was either:
 - (i) Under twenty-one years of age; or
 - (ii) Blind or disabled as defined under chapter 388-511 WAC.

(3) The estate of a frail elder or vulnerable adult under RCW 74.34.005 is not liable for the cost of adult protective services (APS) financed with state funds only.

(4) On or before December 31, 2009, the client's estate is not liable for amounts paid for medicare premiums and other cost-sharing expenses incurred on behalf of a client who is eligible only for the medicare savings programs (MSP), and not otherwise medicaid eligible.

(5) On or after January 1, 2010, the client's estate is not liable for amounts paid for medical assistance cost-sharing for benefits for clients who received coverage under a MSP only or for clients who receive coverage under a medicare savings program and medicaid as described in 42 USC 1396a(a)(10)(E).

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2742 Services subject to recovery. The department considers the medical services the client received and the dates when the services were provided to the client, in order to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services (~~(and)~~), subsection (2) covers liability for state-only funded long-term care services, and subsection (3) covers liability for all other state-funded services. An estate can be liable under (~~both~~) any of these subsections.

(1) The client's estate is liable for:

(a) All medicaid services provided from July 26, 1987 through June 30, 1994;

(b) The following medicaid services provided after June 30, 1994 and before July 1, 1995:

- (i) Nursing facility services;
- (ii) Home and community-based services; and
- (iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services.

(c) The following medicaid services provided after June 30, 1995 and before June 1, 2004:

- (i) Nursing facility services;
- (ii) Home and community-based services;
- (iii) Adult day health;
- (iv) Medicaid personal care;
- (v) Private duty nursing administered by the aging and disability services administration of the department; and
- (vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.

(d) The following services provided on and after June 1, 2004 through December 31, 2009:

(i) All medicaid services, including those services described in subsection (c) of this section;

(ii) Medicare savings programs services for individuals also receiving medicaid;

(iii) Medicare premiums only for individuals also receiving medicaid; and

(iv) Premium payments to managed care organizations.

(e) The following services provided on or after January 1, 2010:

(i) All medicaid services except those defined under subsection (d)(ii) and (d)(iii) of this section;

(ii) All institutional medicaid services described in subsection (c) of this section;

(iii) Premium payments to managed care organizations.

(2) The client's estate is liable for all state-only funded long-term care services and related hospital and prescription drug services provided to:

(a) Home and community services' clients on and after July 1, 1995; and

(b) Division of developmental disabilities' clients on and after June 1, 2004.

(3) The client's estate is liable for all state-funded services provided regardless of the age of the client at the time the services were provided.

WSR 10-03-034

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-06—Filed January 12, 2010, 3:22 p.m., effective January 16, 2010]

Effective Date of Rule: January 16, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
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: To reduce incidental mortality on wild steelhead. The 2009-2010 forecasted return of wild steelhead returning to the Green River is only four hundred fifty-eight and the escapement goal is two thousand. This action will reduce the incidental hooking mortalities of wild steelhead. 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: January 12, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Green (Duwamish) River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective January 16, 2010 until further notice, it is unlawful to fish in waters of the Green River from the 1st Avenue South Bridge in Seattle upstream to the South 277th Bridge in Auburn.

(2) Effective February 1, 2010 until further notice, it is unlawful to fish in waters of the Green River from the 277th Bridge in Auburn upstream to the Tacoma Headworks Dam.

WSR 10-03-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-12—Filed January 14, 2010, 1:19 p.m., effective January 14, 2010, 1:19 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300K; and amending WAC 220-52-073.

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: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and

provide for an orderly 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 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: January 14, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07300L Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 3, 4, 6, and 7 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2, and 4 are open only on Monday through Friday of each week.

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red and green sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300K Sea urchin. (09-281)

WSR 10-03-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-11—Filed January 14, 2010, 1:21 p.m., effective January 16, 2010]

Effective Date of Rule: January 16, 2010.

Purpose: Amend personal use fishing rules.

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

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 Whitehorse Hatchery facility will meet broodstock goals for winter steelhead, the North Fork Stillaguamish River will reopen for fishing January 16, 2010. 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: January 14, 2010.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective January 16, 2010:

WAC 232-28-61900K Exceptions to statewide rules—North Fork Stillaguamish River. (09-269)

WSR 10-03-052

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed January 15, 2010, 10:51 a.m., effective February 1, 2010]

Effective Date of Rule: February 1, 2010.

Purpose: The purpose of this rule is to amend chapter 246-296 WAC, Drinking water state revolving fund loan program, to include criteria for water systems to obtain a loan as provided in the federal appropriations bill for fiscal year 2010 under section 1452 of the Safe Drinking Water Act as enacted on October 31, 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 246-296-020 Definitions.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: Safe Drinking Water Act.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The Administrative Procedure Act allows the department to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

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

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

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

The 2010 federal appropriations bill, enacted October 31, 2009, funds section 1452 of Safe Drinking Water Act and includes criteria for Group A public water systems that obtain a drinking water state revolving fund (DWSRF) loan. To make these funds available in Washington state, the department must immediately adopt a rule for the SRF program, as described below.

The enacted bill contains a number of new requirements that are not currently in rule. The state must assure that our requirements align with these requirements in order to receive this funding. Specifically, the bill requires at least thirty percent of the new federal award be given out as subsidy to eligible recipients and at least twenty percent of the federal award must be used for eligible green projects. The current DWSRF rules do not identify any form of funding other than traditional loans with full repayment, nor do they address funding of green projects.

The necessary rule changes must be in place prior to awarding the appropriations funds. The process of awarding funds includes project screening, ranking, and selection. This process must begin February 1, 2010, in order to award funding to eligible recipients within the current federal fiscal year. After completing the screening, ranking, and selection process, the department must publish for review and comment a draft intended use plan (IUP) that includes a list of fundable projects. IUPs are required to be submitted with the state's application to EPA for the funding. States cannot access the funds until that process is complete. The department plans to publish a draft IUP in April. The short timeframe between

the adoption of the federal appropriations bill and the deadline for publication of the IUP do not allow use of the normal rule-making process. Therefore, an emergency rule is necessary in order to meet the requirements of the federal appropriations bill.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, 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 1, Repealed 0.

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

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

Date Adopted: January 15, 2010.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-020 Definitions. "Act" means the Federal Safe Drinking Water Act (SDWA).

"Application" means a DWSRF loan application submitted to DOH for DWSRF assistance.

"Application package" means DWSRF loan application form(s), requirements, terms of assistance, and related information jointly developed and published by DOH, the board, and the board's agent, ((CTED)) COM.

"Binding commitment" means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.

"Board" means the state of Washington public works board.

"Borrower" means the entity or individual that has the legal and financial responsibility for the loan.

"Certification/certify" means documentation signed by the loan recipient that specific requirements or standards have been or will be met.

"Change orders" means a formal document that alters specific conditions of the original construction contract document including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.

"COM" means the department of commerce.

"Community water system" means any Group A public water system that regularly serves fifteen or more year-round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.

"Construction documents" means construction documents developed and approved under WAC 246-290-120.

"Construction completion report" means a form provided by DOH to the applicant required to be completed for

each specific construction project to document project construction in accordance with chapter 246-290 WAC and general standards of engineering practice. The completed form must be stamped with an engineer's seal, signed, and dated by a professional engineer.

"Cross-cutting authorities" means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.

"CTED" means the department of community, trade and economic development.

"Debt obligation" means a legal obligation or liability to pay something to someone else.

"Default" means failure to meet a financial obligation such as a loan payment.

"Disadvantaged community" means the service area of a public water system where at least fifty-one percent of the customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development.

"Distressed county" means a county that is designated by the Washington state employment security department as distressed at the time of loan execution.

"DOH" means the department of health.

"Drinking water state revolving fund (DWSRF)" means the program established to administer the federal funds and other funds deposited in the account authorized to finance water system infrastructure, drinking water program activities, and to meet the applicable requirements of RCW 70.119A.170.

"Eligible system" means Group A community water systems, both privately and publicly owned, and nonprofit Group A noncommunity water systems.

"EPA" means the United States Environmental Protection Agency.

"Group A system" means a public water system that regularly serves fifteen or more residential connections, or twenty-five or more people per day for sixty or more days per year.

"Group B system" means a public water system that serves less than fifteen residential connections and less than twenty-five people per day, or serves twenty-five or more people per day for sixty or fewer days per year.

"Individual water supply system" means any water system that is not subject to the state board of health drinking water regulations, chapter 246-290 WAC; or chapter 246-291 WAC, providing water to one single-family residence, or four or fewer connections all of which serve residences on the same farm.

"Intended use plan (IUP)" means the federally required document prepared each year by the state which identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

"HUD" means the United States Department of Housing and Urban Development.

"Loan" means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the ((principle)) principal sum to the DWSRF except when the funds are provided in the form of a loan on which all or some of the principal is forgiven.

"Multiple benefit" means project improvements that address more than one type of health risk.

"Noncommunity water system" means a Group A public water system that is not a community water system.

"Nonprofit organization" means a system that has a federal tax exempt status identification number.

"Nontransient noncommunity system" means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

"Project report" means a project report developed and approved under chapter 246-290 WAC.

"Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances excluding systems serving only one single-family residence and systems with four or fewer connections all of which serve residences on the same farm.

"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

"Regional benefit" means project improvements that affect more than one public water system.

"Restructuring" means changing system operation, management and/or ownership, including, but not limited to:

- (1) Mergers;
- (2) Voluntary transfer of ownership; or
- (3) Receivership (involuntary transfer of operation and/or ownership).

"Safe Drinking Water Act (SDWA)" means the Federal Safe Drinking Water Act, including all amendments.

"Satellite management agency (SMA)" means a person or entity that is approved by the department of health to own or operate public water systems on a regional or county-wide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.

"Set-aside" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities as authorized in Section 1452 of the SDWA, to fund new programs, and other drinking water program activities.

"Significant noncomplier (SNC)" means a water system that is violating or has violated department rules and the violations may create or have created an imminent or a significant risk to human health.

"Small water system management program (SWSMP)" means a small water system management program developed and approved under WAC 246-290-105.

"State environmental review process (SERP)" means the environmental review process conducted on all DWSRF projects that ensures compliance with state and federal environmental review through a National Environmental Policy Act (NEPA)-like process.

"State match" means funds equaling at least twenty percent of the amount of the federal capitalization grants the

state must deposit into the DWSRF loan fund including the necessary match for set-asides.

"Surface water" means a body of water open to the atmosphere and subject to surface runoff.

"System capacity" means the system's operational, technical, managerial and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"Transfer of ownership" means to convey ownership of a water system from one person or entity to another.

"Transient noncommunity system" means a Group A noncommunity water system that serves:

- (1) Twenty-five or more different people per day during sixty or more days per year;
- (2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or
- (3) One thousand or more people for two or more consecutive days.

"Water facilities inventory form (WFI)" means the DOH form summarizing each public water system's characteristics.

"Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

"Water system plan (WSP)" means a water system plan developed and approved under WAC 246-290-100.

NEW SECTION

WAC 246-296-185 Implementation of Public Law 111-88 Making Appropriations for the Department of the Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010, and for Other Purposes. (1) Purpose and intent.

(a) The purpose of this section is to implement the requirements of Public Law (P.L.) 111-88 Making Appropriations for the Department of the Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010, and for Other Purposes.

(b) The DWSRF rules in this chapter apply to the federal fiscal year 2010 DWSRF funds except as otherwise provided in this section. If a conflict exists between the rules in this chapter and P.L. 111-88, P.L. 111-88 shall control.

(2) Provision of funds.

(a) Notwithstanding the requirements of section 1452(f) of the Safe Drinking Water Act, 42 U.S.C. Sec. 300j-12(f), the state will provide at least thirty percent of the amount of the 2010 federal grant to provide additional subsidization to eligible recipients in the form of forgiveness of principal.

(b) To the extent there are sufficient eligible applications, the state will provide at least twenty percent of the amount of the 2010 federal grant for green projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(c) In addition to the prioritization criteria listed in WAC 246-296-130, DOH may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects when ranking projects.

(d) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects in the final project selection.

(3) Qualification for principal forgiveness.

(a) If the water system is located in a disadvantaged community, a project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(b) If the project does not fall under (a) of this subsection, and the water system is located in a distressed county, the project may be awarded a loan with principal forgiveness for at least thirty percent of the loan amount.

(c) If the project results in restructuring of a water system that involves a change of ownership prior to loan execution, the project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(d) If the project does not fall under (a), (b), or (c) of this subsection, it may be awarded a low interest loan.

(4) Loan fee. A loan fee of one percent will be charged on all loans including those loans on which all, some or none of the principal is forgiven.

Reasons for this Finding: It is necessary to obtain this information to quickly detect and respond to increases in transmission or severity of the novel 2009 H1N1 influenza as well as the other influenza strains during the remainder of the 2009-2010 influenza season. This information is crucial for effective control measures.

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

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

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

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

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

Date Adopted: January 15, 2010.

Mary C. Selecky
Secretary

WSR 10-03-053

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed January 15, 2010, 11:02 a.m., effective January 15, 2010, 11:02 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 246-101-101 and 246-101-301, the purpose of the rule is to obtain from health care providers and health care facilities immediate notification of hospitalized or deceased persons with laboratory-confirmed influenza. The rule follows the Centers for Disease Control and Prevention's recommendation to monitor hospitalized and deceased persons with laboratory-confirmed influenza, and allows for a more complete monitoring of influenza activity in Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 246-101-101 and 246-101-301.

Statutory Authority for Adoption: RCW 43.20.050.

Other Authority: WAC 246-101-015(4).

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.

AMENDATORY SECTION (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

WAC 246-101-101 Notifiable conditions and the health care provider. This section describes the conditions that Washington's health care providers must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table HC-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. Principal health care providers shall notify public health authorities of these conditions as individual case reports using procedures described throughout this chapter. Other health care providers in attendance shall notify public health authorities of the following notifiable conditions, unless the condition notification has already been made. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC 246-101-105, 246-101-110, 246-101-115, and 246-101-120 also include requirements for how notifications shall be made, when they shall be made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HC-1 (Conditions Notifiable by Health Care Providers)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days	√	
Animal Bites	Immediately	√	
Arboviral Disease	Within 3 work days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Asthma, occupational	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√
Birth Defects – Cerebral Palsy	Monthly		√
Birth Defects – Alcohol Related Birth Defects	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis (<i>Brucella</i> species)	Immediately	√	
Campylobacteriosis	Within 3 work days	√	
Chancroid	Within 3 work days	√	
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 work days	√	
Cyclosporiasis	Within 3 work days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (including): • Anthrax • Smallpox	Immediately	√	
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√	
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√	
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	Immediately	√	
Giardiasis	Within 3 work days	√	
Gonorrhea	Within 3 work days	√	
Granuloma inguinale	Within 3 work days	√	
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within 3 work days	√	
Hemolytic uremic syndrome	Immediately	√	
Hepatitis A (acute infection)	Immediately	√	
Hepatitis B (acute infection)	Within 3 work days	√	
Hepatitis B surface antigen + pregnant women	Within 3 work days	√	
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√	
Hepatitis C – Acute and chronic	Monthly	√	
Hepatitis (infectious), unspecified	Within 3 work days	√	
Herpes simplex, neonatal and genital (initial infection only)	Within 3 work days	√	
Human immunodeficiency virus (HIV) infection	Within 3 work days	√	
<u>Influenza (laboratory confirmed hospitalized or fatal cases only)</u>	<u>Immediately</u>	<u>√</u>	
Legionellosis	Within 3 work days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Leptospirosis	Within 3 work days	√	
Listeriosis	Immediately	√	
Lyme Disease	Within 3 work days	√	
Lymphogranuloma venereum	Within 3 work days	√	
Malaria	Within 3 work days	√	
Measles (rubeola)	Immediately	√	
Meningococcal disease	Immediately	√	
Mumps	Within 3 work days	√	
Paralytic shellfish poisoning	Immediately	√	
Pertussis	Immediately	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Pesticide poisoning (all other)	Within 3 work days		√
Plague	Immediately	√	
Poliomyelitis	Immediately	√	
Psittacosis	Within 3 work days	√	
Q Fever	Within 3 work days	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (Including use of post-exposure prophylaxis)	Within 3 work days	√	
Relapsing fever (borreliosis)	Immediately	√	
Rubella (including congenital rubella syndrome)	Immediately	√	
Salmonellosis	Immediately	√	
Serious adverse reactions to immunizations	Within 3 work days	√	
Shigellosis	Immediately	√	
Syphilis	Within 3 work days	√	
Tetanus	Within 3 work days	√	
Trichinosis	Within 3 work days	√	
Tuberculosis	Immediately	√	
Tularemia	Within 3 work days	√	
Typhus	Immediately	√	
Vibriosis	Within 3 work days	√	
Yellow fever	Immediately	√	
Yersiniosis	Within 3 work days	√	
Other rare diseases of public health significance	Immediately	√	
Unexplained critical illness or death	Immediately	√	

AMENDATORY SECTION (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

WAC 246-101-301 Notifiable conditions and health care facilities. This section describes the conditions that Washington's health care facilities must notify public health authorities of on a statewide basis. The board finds that the

conditions in the table below (Table HF-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction. Health care facilities are required to notify public health authorities of cases that occur

in their facilities. Health care facilities may choose to assume the notification for their health care providers for conditions designated in Table HF-1. Health care facilities may not assume the reporting requirements of laboratories that are components of the health care facility. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC 246-101-305, 246-101-310, 246-101-315, and 246-101-320 also include requirements for how notifications shall be made, when they are made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HF-1 (Conditions Notifiable by Health Care Facilities)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days		√
Animal Bites	Immediately	√	
Arboviral Disease	Within 3 work days	√	
Asthma, occupational	Monthly		√
Birth Defects – Abdominal Wall Defects (inclusive of gastroschisis and omphalocele)	Monthly		√
Birth Defects – Autism Spectrum Disorders	Monthly		√
Birth Defects – Cerebral Palsy	Monthly		√
Birth Defects – Down Syndrome	Monthly		√
Birth Defects – Alcohol Related Birth Defects	Monthly		√
Birth Defects – Hypospadias	Monthly		√
Birth Defects – Limb reductions	Monthly		√
Birth Defects – Neural Tube Defects (inclusive of anencephaly and spina bifida)	Monthly		√
Birth Defects – Oral Clefts (inclusive of cleft lip with/without cleft palate)	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis (<i>Brucella</i> species)	Immediately	√	
Cancer (<i>See chapter 246-430 WAC</i>)	Monthly		√
Chancroid	Within 3 work days	√	
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 work days	√	
Cyclosporiasis	Within 3 work days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (including): • Anthrax • Smallpox	Immediately	√	
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√	
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√	
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	Immediately	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Giardiasis	Within 3 work days	√	
Gonorrhea	Within 3 work days	√	
Granuloma inguinale	Within 3 work days	√	
Gunshot wounds (nonfatal)	Monthly		√
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within 3 work days	√	
Hemolytic uremic syndrome	Immediately	√	
Hepatitis A (acute infection)	Immediately	√	
Hepatitis B (acute infection)	Within 3 work days	√	
Hepatitis B surface antigen + pregnant women	Within 3 work days	√	
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases	Monthly	√	
Hepatitis C – Acute and chronic	Monthly	√	
Hepatitis (infectious), unspecified	Within 3 work days	√	
Human immunodeficiency virus (HIV) infection	Within 3 work days	√	
<u>Influenza (laboratory confirmed hospitalized or fatal cases only)</u>	<u>Immediately</u>	<u>√</u>	
Legionellosis	Within 3 work days	√	
Leptospirosis	Within 3 work days	√	
Listeriosis	Immediately	√	
Lyme Disease	Within 3 work days	√	
Lymphogranuloma venereum	Within 3 work days	√	
Malaria	Within 3 work days	√	
Measles (rubeola)	Immediately	√	
Meningococcal disease	Immediately	√	
Mumps	Within 3 work days	√	
Paralytic shellfish poisoning	Immediately	√	
Pertussis	Immediately	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Plague	Immediately	√	
Poliomyelitis	Immediately	√	
Psittacosis	Within 3 work days	√	
Q Fever	Within 3 work days	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (Use of post-exposure prophylaxis)	Within 3 work days	√	
Relapsing fever (borreliosis)	Immediately	√	
Rubella (including congenital rubella syndrome)	Immediately	√	
Salmonellosis	Immediately	√	
Serious adverse reactions to immunizations	Within 3 work days	√	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Shigellosis	Immediately	√	
Syphilis	Within 3 work days	√	
Tetanus	Within 3 work days	√	
Trichinosis	Within 3 work days	√	
Tuberculosis	Immediately	√	
Tularemia	Within 3 work days	√	
Typhus	Immediately	√	
Vibriosis	Within 3 work days	√	
Yellow fever	Immediately	√	
Yersiniosis	Within 3 work days	√	
Other rare diseases of public health significance	Immediately	√	
Unexplained critical illness or death	Immediately	√	

**WSR 10-03-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-09—Filed January 15, 2010, 1:25 p.m., effective January 15, 2010, 1:25 p.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100Z and 220-32-05100A; 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 treaty Indian winter season. Allows sales of fish caught with platform and hook and line gear. Allows the Yakama Nation to conduct C&S

fisheries in the area below Bonneville Dam consistent with the 2007 MOA between Washington and Yakama Nation. Fisheries are consistent with the 2008-2017 interim management agreement and the associated biological opinion. Rule is consistent with the 2007 MOA between Yakama Nation and Washington state. Rule is consistent with action of the Columbia River compact in January 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon Management Agreement*.

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

F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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 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: January 15, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess Salmon, steelhead, sturgeon, shad, carp, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H; except that those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for Salmon, steelhead, sturgeon, shad, carp, walleye, bass, or yellow perch under the following provisions:

1. Open Areas: SMCRA 1F, 1G, 1H:

a. Season: 12:00 p.m. February 1 to 6:00 p.m. March 21, 2010.

b. Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

c. Allowable sale: Salmon, steelhead, sturgeon, shad, carp, walleye, bass, yellow perch. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools and between 38-54 inches in fork length in the Bonneville Pool may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Fish landed during an open commercial period may be sold at any time. Sale of platform or hook-and-line-caught fish is allowed during open commercial seasons.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect except the Spring Creek Hatchery sanctuary (section 5).

2. Open Area: 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), for enrolled Yakama Nation members. Consistent

with the 2007 MOA between Washington and Yakama Nation.

a. Season: 12:00 p.m. February 1 to 6:00 p.m. March 21, 2010

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

c. Allowable Sales: Salmon, steelhead, shad, carp, walleye, bass, yellow perch. **Sturgeon retention is prohibited**, and may not be sold nor retained for ceremonial & subsistence purposes. Fish landed during an open commercial period may be sold at any time. Sale of platform or hook-and-line-caught fish is allowed during open commercial seasons. Sales may not occur on USACE property.

3. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100Z Columbia River salmon seasons above Bonneville Dam.

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2010:

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam.

WSR 10-03-069

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-14—Filed January 15, 2010, 4:23 p.m., effective January 15, 2010, 4:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-27000D and 220-56-27000E; and amending WAC 220-56-270.

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: Sets the eulachon smelt sport fishery in the Cowlitz River. The season is consistent with a Level 1 fishery, in accordance with the Washington and Oregon eulachon management plan. 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: January 15, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-27000E Smelt—Areas and seasons. Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-275, effective immediately through March 31, 2010, it is unlawful to fish for or possess smelt in those waters of the Columbia River except under the following provisions:

Area: Mainstem Columbia River below Bonneville Dam

Open Dates: 7 days/week

Hours: 24 hours per day

Daily limit: 10 pounds, the possession limit is equal to the daily limit

Gear: Dipnets

Area: Cowlitz River

Open Dates: Saturdays, February 6, 13, 20 and 27

Hours: 7:00 a.m. to 3:00 a.m. each day.

Daily limit: 10 pounds, the possession limit is equal to the daily limit

Gear: Dipnets

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-27000D Smelt—Areas and seasons.
(09-275)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 1, 2010:

WAC 220-56-27000E Smelt—Areas and seasons.

WSR 10-03-070 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-13—Filed January 15, 2010, 4:26 p.m., effective February 16, 2010]

Effective Date of Rule: February 16, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: 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 closure will reduce incidental hooking mortality on wild steelhead. The 2009/2010 forecasted return of wild winter steelhead to the Skagit Basin is expected to be below the escapement floor of 6,000. 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: January 15, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Skagit and Sauk rivers. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective February 16, through April 30, 2010, it is unlawful to fish in waters of the Skagit River from the mouth upstream to Highway 536 (Memorial Hwy. Bridge) at Mount Vernon.

(2) Effective February 16, through May 31, 2010, it is unlawful to fish in waters of the Skagit River from the Highway 536 (Memorial Hwy. Bridge) at Mount Vernon upstream to the Gorge Powerhouse.

(3) Effective February 16 through June 4, 2010, it is unlawful to fish in waters of the Sauk River from the mouth upstream to the Whitechuck River.

WSR 10-03-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-15—Filed January 19, 2010, 9:03 a.m., effective January 19, 2010, 9:03 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-27000E and 220-56-27000F; and amending WAC 220-56-270.

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: Sets the eulachon smelt sport fishery in the Cowlitz River. The season is consistent with a Level 1 fishery, in accordance with the Washington and Oregon eulachon management plan. 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: January 19, 2010.

Joe Stohr
for Philip Anderson
Director

Area: Cowlitz River
Open Dates: Saturdays, February 6, 13, 20 and 27
Hours: 7:00 a.m. to 3:00 p.m. each day.
Daily limit: 10 pounds, the possession limit is equal to the daily limit
Gear: Dipnets

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-27000E Smelt—Areas and seasons.
(10-14)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 1, 2010:

WAC 220-56-27000F Smelt—Areas and seasons.

NEW SECTION

WAC 220-56-27000F Smelt—Areas and seasons. Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-275, effective immediately through March 31, 2010, it is unlawful to fish for or possess smelt in those waters of the Columbia River except under the following provisions:

Area: Mainstem Columbia River below Bonneville Dam

Open Dates: 7 days/week

Hours: 24 hours per day

Daily limit: 10 pounds, the possession limit is equal to the daily limit

Gear: Dipnets