

WSR 10-14-049
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 30, 2010, 8:11 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Under sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244) for fiscal years 2010 and 2011, funding for dental services is reduced from current levels. The department is amending language in sections in chapter 388-535 WAC in order to meet these targeted budget expenditure levels. The changes include, for clients through age twenty, reducing coverage of restorative services (crowns) and reducing coverage for repairs to partial dentures; for clients age twenty-one and older, reducing coverage for endodontic treatment and oral and maxillofacial surgery, eliminating coverage for cast metal framework partial dentures, immediate dentures, oral and parenteral conscious sedation, intravenous conscious sedation, and nonintravenous conscious sedation; and limiting coverage of complete dentures and overdentures. For all clients, the department is reducing coverage for partial dentures. These rules may not be applicable to clients of the division of developmental disabilities.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535-1065, 388-535-1084, 388-535-1090, 388-535-1100, 388-535-1261, 388-535-1266, 388-535-1267, 388-535-1269, 388-535-1271, and 388-535-1450.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

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

Reasons for this Finding: Emergency rule adoption is required in order for the department to comply with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. This emergency filing is necessary while the department prepares drafts for the permanent rule to share with providers for their input. Following this, the department plans to formally adopt the permanent rule.

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 10, 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 10, Repealed 0.

Date Adopted: June 23, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-17-107, filed 8/17/07, effective 9/17/07)

WAC 388-535-1065 Coverage limits for dental-related services provided under the GA-U and ADATSA programs. (1) Clients who receive medical care services under the following programs may receive the dental-related services described in this section:

(a) General assistance unemployable (GA-U); and
(b) Alcohol and drug abuse treatment and support act (ADATSA).

(2) The department covers the following dental-related services for a client eligible under the GA-U or ADATSA program:

(a) Services provided only as part of dental treatment for:
(i) Limited oral evaluation;
(ii) Periapical or bite-wing radiographs that are medically necessary to diagnose only the client's chief complaint;
(iii) ~~((Palliative treatment to relieve dental pain;~~
~~(iv))~~ Pulpal debridement to relieve dental pain; or
~~((iv))~~ (iv) Endodontic (root canal only) treatment for maxillary and mandibular anterior teeth (cuspids and incisors) when prior authorized((+)).

(b) Tooth extraction when at least one of the following apply:

(i) The tooth has a radiograph apical lesion;
(ii) The tooth is endodontically involved, infected, or abscessed;
(iii) The tooth is not restorable; or
(iv) The tooth is not periodontally stable.

(3) Tooth extractions require prior authorization when:
(i) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; and

(ii) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

(4) Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC.

(5) The department does not cover any dental-related services not listed in this section for clients eligible under the GA-U or ADATSA program, including any type of removable prosthesis (denture).

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1084 Covered dental-related services for clients through age twenty—Restorative services. The department covers medically necessary dental-related restorative services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Restorative/operative procedures.** The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:

- (a) Clients ages eight and younger;
- (b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and
- (c) Clients of the division of developmental disabilities according to WAC 388-535-1099.

(2) **Amalgam restorations for primary and permanent teeth.** The department considers:

(a) Tooth preparation, all adhesives (including amalgam bonding agents), liners, bases, and polishing as part of the amalgam restoration.

(b) The occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.

(c) Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers one buccal and one lingual surface per tooth.

(d) Multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration.

(e) Amalgam restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(3) **Amalgam restorations for primary posterior teeth only.** The department covers amalgam restorations for a maximum of two surfaces for a primary first molar and maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this section for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional amalgam restorations.

(4) **Amalgam restorations for permanent posterior teeth only.** The department:

(a) Covers two occlusal amalgam restorations for teeth one, two, three, fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure.

(b) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(5) **Resin-based composite restorations for primary and permanent teeth.** The department:

(a) Considers tooth preparation, acid etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration.

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration.

(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the dentoenamel junction (DEJ) to be sealants (see WAC 388-535-1082(4) for sealants coverage).

(e) Considers multiple preventive restorative resin, flowable composite resin, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration.

(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial and/or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(g) Considers resin-based composite restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(6) **Resin-based composite restorations for primary teeth only.** The department covers:

(a) Resin-based composite restorations for a maximum of three surfaces for a primary anterior tooth (see subsection (9)(b) of this section for restorations for a primary anterior tooth requiring a four or more surface restoration). The department does not pay for additional composite or amalgam restorations on the same tooth after three surfaces.

(b) Resin-based composite restorations for a maximum of two surfaces for a primary first molar and a maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this subsection for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional composite restorations on the same tooth.

(c) Glass (~~(ionomer)~~) ionomer restorations only for primary teeth, and only for clients ages five and younger. The department pays for these restorations as a one surface resin-based composite restoration.

(7) **Resin-based composite restorations for permanent teeth only.** The department covers:

(a) Two occlusal resin-based composite restorations for teeth one, two, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure.

(b) Resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period.

(e) Replacement of resin-based composite restoration on permanent teeth within a two-year period only if the restoration has an additional adjoining carious surface. The department

ment pays the replacement restoration as a one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(8) **Crowns.** The department:

(a) Covers the following crowns once every five years, per tooth, for permanent anterior teeth for clients ages twelve through twenty when the crowns meet prior authorization criteria in WAC 388-535-1220 and the provider follows the prior authorization requirements in (d) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

~~(b) ((Covers full coverage metal crowns once every five years, per tooth, for permanent posterior teeth to include high noble, titanium, titanium alloys, noble, and predominantly base metal crowns for clients ages eighteen through twenty when they meet prior authorization criteria and the provider follows the prior authorization requirements in (d) and (e) of this subsection.~~

~~(e))~~ Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The department covers a one surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating (placement), including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

~~((c))~~ (c) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

~~((d))~~ (d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

(9) **Other restorative services.** The department covers:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years without prior authorization if the tooth requires a four or more surface restoration.

(c) Prefabricated stainless steel crowns for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns for permanent posterior teeth once every three years when prior authorized.

(e) Prefabricated stainless steel crowns for clients of the division of developmental disabilities according to WAC 388-535-1099.

(f) Core buildup, including pins, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

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

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1090 Covered dental-related services for clients through age twenty—Prosthodontics (removable). The department covers medically necessary prosthodontics (removable) services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Prosthodontics.** The department:

(a) Requires prior authorization for all removable prosthodontic and prosthodontic-related procedures, except as stated in (c)(ii)(B) of this subsection. Prior authorization requests must meet the criteria in WAC 388-535-1220. In addition, the department requires the dental provider to submit:

(i) Appropriate and diagnostic radiographs of all remaining teeth.

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

(ii) A prescription written by a dentist when a dentist's prior authorization request is for an immediate denture or a cast metal partial denture.

(b) Covers complete dentures, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized.

(ii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat (placement) date of the complete denture, is considered part of the complete denture procedure and is not paid separately.

(iii) Replacement of an immediate denture with a complete denture is covered if the complete denture is prior authorized at least six months after the seat date of the immediate denture.

(iv) Replacement of a complete denture or overdenture is covered only if prior authorized at least five years after the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(c) Covers partial dentures, as follows:

(i) A partial denture, including a resin ~~((or flexible base))~~ partial denture, is covered for anterior and posterior teeth when the partial denture meets the following department coverage criteria.

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing or four or more posterior teeth are missing;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of the remaining teeth.

(ii) Prior authorization of partial dentures:

(A) Is required for clients ages nine and younger; and

(B) Not required for clients ages ten through twenty.

Documentation supporting the medical necessity for the service must be included in the client's file.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the partial denture, is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a resin or flexible base denture is covered only if prior authorized at least three years after the seat date of the resin or flexible base partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria in (c)(i) of this subsection.

(d) Covers cast-metal framework partial dentures, as follows:

(i) Cast-metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ages eighteen through twenty only once in a five-year period, on a case-by-case basis, when prior authorized and department coverage criteria listed in subsection (d)(v) of this subsection are met.

(ii) Cast-metal framework partial dentures for clients ages seventeen and younger are not covered.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the cast metal partial denture is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(v) of this subsection.

(v) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) There are fewer than eight posterior teeth in occlusion;

(E) There is a minimum of four stable teeth remaining per arch; and

(F) There is a five-year prognosis for the retention of the remaining teeth.

(vi) The department may consider resin partial dentures as an alternative if the department determines the criteria for cast metal framework partial dentures listed in (d)(v) of this subsection are not met.

(e) Requires a provider to bill for removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to subsection (2)(e) and (f) for what the department may pay if the removable prosthesis is not delivered and inserted.

(f) Requires a provider to submit the following with a prior authorization request for removable prosthetics for a client residing in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the denture/partial appliance request for skilled nursing facility client form (DSHS 13-788) available from the department's published billing instructions.

(g) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in subsection (1)(d) are met.

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthodontics.** The department covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs to complete and partial dentures, once in a twelve month period. The cost of repairs cannot exceed the cost of replacement. The department covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or cast-metal partial denture, once in a three-year period when performed at least six months after the seating date. An additional reline or rebase may be covered for complete or cast-

metal partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings, and only when performed within three months after the seating date.

(e) Laboratory fees, subject to the following:

(i) The department does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The department may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the prosthesis;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the complete, immediate, or partial dentures; or

(E) Dies.

(f) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1100 Dental-related services not covered for clients through age twenty. (1) The department does not cover the following for clients through age twenty:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC 388-534-0100 for information about the EPSDT program.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the department are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's current published documents.

(2) The department does not cover dental-related services listed under the following categories of service for clients through age twenty (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The department does not cover:

(i) Extraoral radiographs.

(ii) Comprehensive periodontal evaluations.

(b) **Preventive services.** The department does not cover:

(i) Nutritional counseling for control of dental disease.

(ii) Tobacco counseling for the control and prevention of oral disease.

(iii) Removable space maintainers of any type.

(iv) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.

(v) Space maintainers for clients ages nineteen through twenty.

(c) **Restorative services.** The department does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface:

(ii) Gold foil restorations.

~~((ii))~~ (iii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

~~((iii))~~ (iv) Preventive restorations.

(v) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

~~((iv))~~ (vi) Permanent crowns for ~~((third molars one, sixteen, seventeen, and thirty-two))~~ bicuspid or molar teeth.

~~((v))~~ (vii) Temporary or provisional crowns (including ion crowns).

~~((vi))~~ (viii) Labial veneer resin or porcelain laminate restorations.

~~((vii))~~ (ix) Any type of coping.

~~((viii))~~ (x) Crown repairs.

~~((ix))~~ (xi) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The department does not cover:

(i) Any endodontic therapy on primary teeth, except as described in WAC 388-535-1086 (3)(a).

(ii) Apexification/recalcification for root resorption of permanent anterior teeth.

(iii) Any apexification/recalcification procedures for bicuspid or molar teeth.

(iv) Any apicoectomy/periradicular services for bicuspid or molar teeth.

(v) Any surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The department does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement.

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of nonsurgical periodontal service.

(f) **Removable prosthodontics.** The department does not cover:

- (i) Removable unilateral partial dentures.
- (ii) Any interim complete or partial dentures.
- (iii) Flexible base partial dentures.
- (iv) Any type of permanent soft relined (e.g., molloplast).
- (v) Precision attachments.
- ~~((iv))~~ (vi) Replacement of replaceable parts for semi-precision or precision attachments.
- (g) **Implant services.** The department does not cover:
 - (i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, eposteal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer.
 - (ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.
 - (iii) The removal of any implant as described in (g)(i) of this subsection.
- (h) **Fixed prosthodontics.** The department does not cover:
 - (i) Any type of fixed partial denture pontic or fixed partial denture retainer.
 - (ii) Any type of precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.
- (i) **Oral and maxillofacial surgery.** The department does not cover:
 - (i) Any oral surgery service not listed in WAC 388-535-1094.
 - (ii) Any oral surgery service that is not listed in the department's list of covered current procedural terminology (CPT) codes published in the department's current rules or billing instructions.
- (j) **Adjunctive general services.** The department does not cover:
 - (i) Anesthesia, including, but not limited to:
 - (A) Local anesthesia as a separate procedure.
 - (B) Regional block anesthesia as a separate procedure.
 - (C) Trigeminal division block anesthesia as a separate procedure.
 - (D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.
 - (E) Application of any type of desensitizing medicament or resin.
 - (ii) Other general services including, but not limited to:
 - (A) Fabrication of an athletic mouthguard.
 - (B) Occlusion analysis.
 - (C) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.
 - (D) Enamel microabrasion.
 - (E) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.
 - (F) Dentist's or dental hygienist's time writing or calling in prescriptions.
 - (G) Dentist's or dental hygienist's time consulting with clients on the phone.
 - (H) Educational supplies.
 - (I) Nonmedical equipment or supplies.
 - (J) Personal comfort items or services.
 - (K) Provider mileage or travel costs.

- (L) Fees for no-show, cancelled, or late arrival appointments.
- (M) Service charges of any type, including fees to create or copy charts.
- (N) Office supplies used in conjunction with an office visit.
- (O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1261 Covered dental-related services for clients age twenty-one and older—Endodontic services. The department covers dental-related endodontic services only as listed in this section for clients age twenty-one and older. ~~((for))~~ For dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065((?)). For dental-related services provided to clients of the division of developmental disabilities, see WAC 388-535-1099.

(1) **Pulpal debridement.** The department covers pulpal debridement on permanent teeth. Pulpal debridement is not covered ~~((when performed with palliative treatment or))~~ when performed on the same day as endodontic treatment.

(2) **Endodontic treatment.** The department:

- (a) Covers endodontic treatment for permanent anterior teeth only;
- (b) Considers the following included in endodontic treatment:
 - (i) Pulpectomy when part of root canal therapy;
 - (ii) All procedures necessary to complete treatment; and
 - (iii) All intra-operative and final evaluation radiographs for the endodontic procedure.
- (c) Pays separately for the following services that are related to the endodontic treatment:
 - (i) Initial diagnostic evaluation;
 - (ii) Initial diagnostic radiographs; and
 - (iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((d) Requires prior authorization for endodontic retreatment and considers endodontic retreatment to include:~~

- ~~(i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;~~
- ~~(ii) Placement of new filling material; and~~
- ~~(iii) Retreatment for permanent maxillary and mandibular anterior teeth only.~~

~~(e) Pays separately for the following services that are related to the endodontic retreatment:~~

- ~~(i) Initial diagnostic evaluation;~~
- ~~(ii) Initial diagnostic radiographs; and~~
- ~~(iii) Post treatment evaluation radiographs if taken at least three months after treatment.~~

~~(f) Does not pay for endodontic retreatment when provided by the original treating provider or clinic.)~~

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1266 Covered dental-related services for clients age twenty-one and older—Prosthodontics

(removable). The department covers dental-related prosthodontics (removable) services only as listed in this section for clients age twenty-one and older. ~~((for))~~ For dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065(~~(j)~~). For dental-related services provided to clients of the division of developmental disabilities, see WAC 388-535-1099.

(1) **Removable prosthodontics.** The department:

(a) Requires prior authorization requests for all removable prosthodontics and prosthodontic-related procedures listed in this subsection. Prior authorization requests must meet the criteria in WAC 388-535-1280. In addition, the department requires the dental provider to:

(i) Submit:

(A) Appropriate and diagnostic radiographs of all remaining teeth.

(B) A dental record that identifies:

(I) All missing teeth for both arches;

(II) Teeth that are to be extracted; and

(III) Dental and periodontal services completed on all remaining teeth.

~~((C) A prescription written by a dentist when a dentist's prior authorization request is for an immediate denture or cast metal partial denture.))~~

(ii) Obtain a signed agreement of acceptance from the client at the conclusion of the final denture try-in for a department authorized complete denture ~~((or a cast metal denture described in this section))~~. If the client abandons the complete denture ~~((or the cast metal partial denture))~~ after signing the agreement of acceptance, the department will deny subsequent requests for the same type dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement that documents the client's acceptance of the dental prosthesis must be submitted to the department's dental prior authorization section before the department pays the claim.

(b) Covers a complete denture or overdenture, as follows:

(i) ~~((A))~~ The department covers an initial complete denture~~((including an immediate denture))~~ or overdenture~~((is covered))~~ for a client only when prior authorized and the complete denture or overdenture meets department coverage criteria;

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of a complete denture, is considered part of the complete denture procedure and is not paid separately;

(iii) ~~((Replacement of an immediate denture with a complete denture is covered only when the replacement occurs at least six months from the seat date of the immediate denture. The replacement complete denture must be prior authorized; and~~

~~((iv)))~~ The department pays for a replacement ~~((of a))~~ complete denture or overdenture ~~((is covered))~~ only when the replacement occurs at least five years from the seat date of the previous complete denture or overdenture ~~((being replaced))~~ paid for by the department. The replacement denture must be prior authorized; and

(iv) The department limits payment for complete dentures to two maxillary complete dentures and two mandibular complete dentures per a client's lifetime.

(c) Covers partial dentures as follows:

(i) Department authorization and payment for a resin ~~((or flexible))~~ base partial denture for anterior and posterior teeth is based on the following criteria:

(A) The remaining teeth in the arch must have a ~~((reasonable))~~ stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing, or four or more posterior teeth, excluding second and third molars, per arch are missing. The department does not pay for replacement of second or third molars;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of all remaining teeth.

(ii) Post-delivery care (e.g. adjustments, soft relines, and repairs) provided after three months from the seat date of the partial denture, is considered part of the partial denture and is not paid separately; and

(iii) Replacement of a resin ~~((or flexible))~~ base denture is covered only when the replacement occurs at least three years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria.

~~(d) ((Covers cast metal framework partial dentures as follows:~~

~~(i) A cast metal framework with resin-based denture, including any conventional clasps, rests, and teeth, is covered on a case-by-case basis when prior authorized and department coverage criteria listed in (d)(iv) of this subsection are met.~~

~~(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of the cast metal partial denture, is considered part of the partial denture procedure and is not paid separately.~~

~~(iii) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only when the replacement occurs at least five years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(iv) of this subsection.~~

~~(iv) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:~~

~~(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;~~

~~(B) The client has established caries control;~~

~~(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;~~

~~(D) There are fewer than eight posterior teeth in occlusion;~~

~~(E) There is a minimum of four stable teeth remaining per arch;~~

~~(F) There is a five-year prognosis, based on the sole discretion of the department, for retention of all remaining teeth.~~

~~(v) The department may consider resin partial dentures as an alternative if the criteria for cast metal framework partial dentures listed in (d)(iv) of this subsection do not meet department specifications.~~

~~(e))~~ Requires the provider to bill for covered removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to (2)(c) ~~((and (d)))~~ of this subsection if the removable prostheses is not delivered and inserted.

~~((f))~~ (e) Requires a provider to submit the following with prior authorization requests for removable prosthetics for a client residing in a nursing home, group home, or other facility:

- (i) The client's medical diagnosis and prognosis;
- (ii) The attending physician's request for prosthetic services;
- (iii) The attending dentist's or denturist's statement documenting medical necessity;
- (iv) A written and signed consent from the client's legal guardian when a guardian has been appointed; and
- (v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client form (DSHS 13-788) available from the department.

~~((g))~~ (f) Limits coverage of removable partial dentures to resin based partial dentures for all clients who reside in one of the facilities listed in ~~((f))~~ (e) of this subsection. ~~((The department may consider cast metal partial dentures if the criteria in (d) of this subsection are met.~~

~~(h))~~ (g) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthetics.** The department covers:

- (a) Repairs to complete ~~((and partial))~~ dentures;
- (b) A laboratory reline or rebase to a complete ~~((or cast metal partial))~~ denture, once in a three-year period when performed at least six months after the seat (placement) date; and
- (c) Laboratory fees, subject to all of the following:
 - (i) The department does not pay laboratory and professional fees for complete and partial dentures, except as stated in (ii) of this subsection;
 - (ii) The department may pay part of billed laboratory fees when the provider has obtained prior authorization from the department, and:
 - (A) At the time of delivery of the prosthesis, the patient is no longer an eligible medical assistance client (see also WAC 388-535-1280(3));
 - (B) The client moves from the state; or
 - (C) The client dies.
 - (iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1267 Covered dental-related services for clients age twenty-one and older—Oral and maxillofa-

cial surgery services. The department covers oral and maxillofacial surgery services only as listed in this section for clients age twenty-one and older. ~~((for))~~ For dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065((h)). For dental-related services provided to clients of the division of developmental disabilities, see WAC 388-535-1099.

(1) **Oral and maxillofacial surgery services.** The department:

(a) Requires enrolled dental providers who do not meet the conditions in WAC 388-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires ~~((enrolled providers (c)))~~ oral and maxillofacial surgeons((h)) who meet the conditions in WAC 388-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the department's current published billing instructions as a CDT covered code (e.g., extractions).

(c) Does not cover oral surgery services described in WAC 388-535-1267 that are performed in a hospital operating room or ambulatory surgery center.

(d) Requires the client's record to include supporting documentation for each type of extraction or any other surgical procedure billed to the department. The documentation must include:

- (i) An appropriate consent form signed by the client or the client's legal representative;
 - (ii) Appropriate radiographs;
 - (iii) Medical justification with diagnosis;
 - (iv) Client's blood pressure, when appropriate;
 - (v) A surgical narrative;
 - (vi) A copy of the post-operative instructions; and
 - (vii) A copy of all pre- and post-operative prescriptions.
- (e) Covers routine and surgical extractions.

(f) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The department includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

(g) Covers biopsy, as follows:

(i) Biopsy of soft oral tissue ~~((or brush biopsy do))~~ does not require prior authorization; and

(ii) All biopsy reports must be kept in the client's record.

(h) ~~((Covers alveoloplasty only when three or more teeth are extracted per arch.~~

~~((i))~~ Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.

~~((j))~~ ~~Covers only the following excisions of bone tissue in conjunction with placement of immediate, complete, or partial dentures when prior authorized:~~

~~(i) Removal of lateral exostosis;~~

~~(ii) Removal of torus palatinus or torus mandibularis; and~~

~~(iii) Surgical reduction of soft tissue or osseous tuberosity.)~~

(2) **Surgical incision-related services.** The department covers ~~((the following surgical incision-related services:~~

~~((a))~~ uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The department does not cover this service when combined with an extraction or root

canal treatment. Documentation supporting medical necessity must be in the client's record ~~(; and~~

~~(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue when prior authorized. Documentation supporting medical necessity must be in the client's record).~~

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1269 Covered dental-related services for clients age twenty-one and older—Adjunctive general services. The department covers dental-related adjunctive general services only as listed in this section for clients age twenty-one and older. ~~((for))~~ For dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065 ~~((;))~~. For dental-related services provided to clients of the division of developmental disabilities, see WAC 388-535-1099.

(1) **Adjunctive general services.** The department:

~~(a) ((Covers palliative (emergency) treatment, not to include pulpal debridement, for treatment of dental pain, limited to once per day, per client, as follows:~~

~~(i) The treatment must occur during limited evaluation appointments;~~

~~(ii) A comprehensive description of diagnosis and services provided must be documented in the client's record; and~~

~~(iii) Appropriate radiographs must be in the client's record to support medical necessity for the treatment.~~

~~(b)) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.~~

~~((c) Covers office based oral or parenteral sedation:~~

~~(i) For services listed as covered in WAC 388-535-1267;~~

~~(ii) For all current published current procedural terminology (CPT) dental codes;~~

~~(iii) When the provider's current valid anesthesia permit is on file with the department; and~~

~~(iv) For clients of the division of developmental disabilities according to WAC 388-535-1099.~~

~~(d) Covers office based general anesthesia for:~~

~~(i) Extraction of three or more teeth;~~

~~(ii) Services listed as covered in WAC 388-535-1267~~

~~(1)(h) and (j);~~

~~(iii) For all current published CPT dental codes;~~

~~(iv) When the provider's current valid anesthesia permit is on file with the department; and~~

~~(v) For clients of the division of developmental disabilities, according to WAC 388-535-1099.~~

~~(e)) (b) Covers ((inhalation)) administration of nitrous oxide, ((onee)) one visit per day.~~

~~((f) Requires providers of oral or parenteral conscious sedation, or general anesthesia to meet:~~

~~(i) The prevailing standard of care;~~

~~(ii) The provider's professional organizational guidelines;~~

~~(iii) The requirements in chapter 246-817 WAC; and~~

~~(iv) Relevant department of health (DOH) medical, dental, and nursing anesthesia regulations;~~

~~(g) Pays for anesthesia services according to WAC 388-535-1350;~~

~~(h)) (c) Covers professional consultation/diagnostic services as follows:~~

~~(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and~~

~~(ii) A client must be referred by the department for the services to be covered.~~

~~(2) **Nonemergency dental services.** The department covers nonemergency dental services performed in a hospital or ambulatory surgical center for clients of the division of developmental disabilities according to WAC 388-535-1099.~~

~~(3) **Professional visits.** The department covers:~~

~~(a) Up to two house/extended care facility calls (visits) per facility, per provider. The department limits payment to two facilities per day, per provider.~~

~~(b) One hospital call (visit), including emergency care, per day, per provider, per client. The department does not pay for additional hospital calls if billed for the same client on the same day.~~

~~(c) Emergency office visits after regularly scheduled hours. The department limits payment to one emergency visit per day, per provider.~~

~~(4) **Drugs and/or ((medicaments)) medications (pharmaceuticals).** The department covers drugs and/or ((medicaments)) medications (pharmaceuticals) only when used ((with parenteral conscious sedation, deep sedation, or general anesthesia)) for therapeutic purposes such as antibiotics, steroids, or anti-inflammatories. The department's dental program does not pay for oral sedation medications.~~

~~(5) **Miscellaneous services.** The department covers:~~

~~(a) Behavior management that requires the assistance of one additional dental staff other than the dentist only for clients of the division of developmental disabilities((-)) (see WAC 388-535-1099). Documentation supporting the need for the behavior management must be in the client's record.~~

~~(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity for the service must be in the client's record.~~

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1271 Dental-related services not covered for clients age twenty-one and older. (1) The department does not cover the following for clients age twenty-one and older (see WAC 388-535-1065 for dental-related services for clients eligible under the GA-U or ADATSA program and WAC 388-535-1099 for clients of the division of developmental disabilities):

(a) The dental-related services and procedures described in subsection (2) of this section;

(b) Any service specifically excluded by statute;

(c) More costly services when less costly, equally effective services as determined by the department are available; and

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's published documents (e.g., billing instructions).

(2) The department does not cover dental-related services listed under the following categories of service for clients age twenty-one and older:

(a) **Diagnostic services.** The department does not cover:

(i) Detailed and extensive oral evaluations or reevaluations;

(ii) Comprehensive periodontal evaluations;

(iii) Extraoral or occlusal intraoral radiographs;

(iv) Posterior-anterior or lateral skull and facial bone survey films;

(v) Sialography;

(vi) Any temporomandibular joint films;

(vii) Tomographic survey;

(viii) Cephalometric films;

(ix) Oral/facial photographic images;

(x) Viral cultures, genetic testing, caries susceptibility tests, adjunctive prediagnostic tests, or pulp vitality tests; or

(xi) Diagnostic casts.

(b) **Preventive services.** The department does not cover:

(i) Nutritional counseling for control of dental disease;

(ii) Tobacco counseling for the control and prevention of oral disease;

(iii) Oral hygiene instructions (included as part of the global fee for oral prophylaxis);

(iv) Removable space maintainers of any type;

(v) Sealants;

(vi) Space maintainers of any type or recementation of space maintainers; or

(vii) Fluoride trays of any type.

(c) **Restorative services.** The department does not cover:

(i) Restorative/operative procedures performed in a hospital operating room or ambulatory surgical center for clients age twenty-one and older. For clients of the division of developmental disabilities, see WAC 388-535-1099;

(ii) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface:

(iii) Gold foil restorations;

(iv) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations;

(v) Prefabricated ~~(resin crowns)~~ restorations;

(vi) Temporary or provisional crowns (including ion crowns);

(vii) Any type of permanent or temporary crown. For clients of the division of developmental disabilities see WAC 388-535-1099;

(viii) Recementation of any crown, inlay/onlay, or any other type of indirect restoration;

(ix) Sedative fillings;

(x) Preventive ~~(restorative resins)~~ restorations;

(xi) Any type of core buildup, cast post and core, or prefabricated post and core;

~~(xii)~~ (xii) Labial veneer resin or porcelain laminate restoration;

~~(xiii)~~ (xiii) Any type of coping;

~~(xiv)~~ (xiv) Crown repairs; or

~~(xv)~~ (xv) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The department does not cover:

(i) Indirect or direct pulp caps;

(ii) Endodontic therapy on any primary teeth for clients age twenty-one and older;

(iii) Endodontic therapy on permanent bicuspid or molar teeth;

(iv) Endodontic retreatment of permanent anterior, bicuspid, or molar teeth:

(v) Any apexification/recalcification procedures;

~~(vi)~~ (vi) Any apicoectomy/periradicular service; or

~~(vii)~~ (vii) Any surgical endodontic procedures including, but not limited to, retrograde fillings, root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The department does not cover:

(i) Surgical periodontal services that include, but are not limited to:

(A) Gingival or apical flap procedures;

(B) Clinical crown lengthening;

(C) Any type of osseous surgery;

(D) Bone or soft tissue grafts;

(E) Biological material to aid in soft and osseous tissue regeneration;

(F) Guided tissue regeneration;

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts; or

(H) Distal or proximal wedge procedures; or

(ii) Nonsurgical periodontal services, including but not limited to:

(A) Intracoronal or extracoronal provisional splinting;

(B) Full mouth debridement;

(C) Localized delivery of chemotherapeutic agents; or

(D) Any other type of nonsurgical periodontal service.

(f) **Prosthodontics (removable).** The department does not cover any type of:

(i) ~~(Removable unilateral partial dentures)~~ Immediate dentures;

(ii) Cast metal framework partial dentures;

(iii) Adjustments to any removable prosthesis;

~~(iv)~~ (iv) Repairs to any partial denture;

(v) Flexible base partial dentures;

(vi) Replacement of second or third molars for any removable prosthesis;

(vii) Any type of permanent soft reline (e.g., molloplast);

(viii) Chairside complete or partial denture relines;

~~(ix)~~ (ix) Any interim complete or partial denture;

~~(x)~~ (x) Precision attachments; or

~~(xi)~~ (xi) Replacement of replaceable parts for semi-precision or precision attachments.

(g) **Oral and maxillofacial prosthetic services.** The department does not cover any type of oral or facial prosthesis other than those listed in WAC 388-535-1266.

(h) **Implant services.** The department does not cover:

(i) Any implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, epostal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer;

(ii) Any maintenance or repairs to procedures listed in (h)(i) of this subsection; or

(iii) The removal of any implant as described in (h)(i) of this subsection.

(i) **Prosthodontics (fixed).** The department does not cover any type of:

(i) Fixed partial denture pontic;

(ii) Fixed partial denture retainer;

(iii) Precision attachment, stress breaker, connector bar, coping, or cast post; or

(iv) Other fixed attachment or prosthesis.

(j) **Oral and maxillofacial surgery.** The department does not cover:

(i) Any nonemergency oral surgery performed in a hospital or ambulatory surgical center for current dental terminology (CDT) procedures;

(ii) Brush biopsy;

(iii) Any type of alveoplasty;

(iv) Any type of excisions of bone tissue including, but not limited to:

(A) Removal of lateral exostosis;

(B) Removal of torus palatinus or torus mandibularis;

and

(C) Surgical reduction of osseous tuberosity.

(v) Any type of surgical reduction of fibrous tuberosity;

(vi) Removal of foreign body from mucosa, skin, or subcutaneous tissue;

(vii) Vestibuloplasty;

~~((iii))~~ (viii) Frenuloplasty/frenulectomy;

~~((iv))~~ (ix) Any oral surgery service not listed in WAC 388-535-1267;

~~((v))~~ (x) Any oral surgery service that is not listed in the department's list of covered current procedural terminology (CPT) codes published in the department's current rules or billing instructions;

~~((vi))~~ (xi) Any type of occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device; or

~~((vii))~~ (xii) Any type of orthodontic service or appliance.

(k) **Adjunctive general services.** The department does not cover:

(i) Anesthesia in any setting to include:

(A) Local anesthesia as a separate procedure;

(B) Regional block anesthesia as a separate procedure;

(C) Trigeminal division block anesthesia as a separate procedure;

(D) General anesthesia sedation;

(E) Oral or parenteral conscious sedation;

(F) Analgesia or anxiolysis as a separate procedure except for ~~((inhalation))~~ administration of nitrous oxide;

~~((E))~~ (G) Medication for oral sedation ~~((or therapeutic drug injections, including antibiotic))~~ or injection of sedative; or

~~((F))~~ (H) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of athletic mouthguard, occlusal guard, or nightguard;

(B) Occlusion analysis;

(C) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties;

(D) Enamel microabrasion;

(E) Dental supplies, including but not limited to, toothbrushes, toothpaste, floss, and other take home items;

(F) Dentist's or dental hygienist's time writing or calling in prescriptions;

(G) Dentist's or dental hygienist's time consulting with clients on the phone;

(H) Educational supplies;

(I) Nonmedical equipment or supplies;

(J) Personal comfort items or services;

(K) Provider mileage or travel costs;

(L) Missed or late appointment fees;

(M) Service charges of any type, including fees to create or copy charts;

(N) Office supplies used in conjunction with an office visit; or

(O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

(3) The department evaluates a request for dental-related services that are listed as noncovered under the provisions in WAC 388-501-0160.

AMENDATORY SECTION (Amending WSR 03-19-080, filed 9/12/03, effective 10/13/03)

WAC 388-535-1450 Payment for denture laboratory services. The ~~((medical assistance administration (MAA)))~~ department does not directly reimburse denture laboratories. ~~((MAA's))~~ The department's reimbursement for complete dentures, ~~((immediate dentures,))~~ partial dentures, and over-dentures includes laboratory fees. The provider is responsible to pay a denture laboratory for services furnished at the request of the provider.

WSR 10-15-004

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-174—Filed July 7, 2010, 3:14 p.m., effective July 8, 2010, 12:01 a.m.]

Effective Date of Rule: July 8, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-620.

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: Enough chinook remain in the overall ocean chinook quota to liberalize the chinook daily limit to two per day. 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: July 7, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62000Y Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. July 8, 2010, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 1:** Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(2) **Areas 2:** Open Sunday through Thursday until further notice: Daily limit 2 salmon, except release wild coho.

(3) **Area 3:** Open Tuesday through Saturday until further notice: Daily limit 2 salmon, except release wild coho.

(4) **Area 4:**

(a) Open Tuesday through Saturday until further notice: Daily limit 2 salmon, except release wild coho.

(i) Beginning August 1, release Chinook east of the Bonilla-Tatoosh Line.

(ii) Beginning August 1, release chum.

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

**WSR 10-15-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-175—Filed July 7, 2010, 4:21 p.m., effective July 11, 2010, 9:00 p.m.]

Effective Date of Rule: July 11, 2010, 9:00 p.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational share of spot shrimp has been taken in Marine Area 6. 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: July 7, 2010.

Sara G. LaBorde
for Philip Anderson
Director

NEW SECTION

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

1) Effective immediately until further notice, all waters equal to or less than 200 feet in depth in Marine Area 6 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

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

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: July 8, 2010.

Sara G. LaBorde
for Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 a.m. July 13 to 6:00 p.m. July 15, 2010.

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

c) GEAR: Gillnets. No mesh restriction.

2. Mainstem Columbia River above Bonneville Dam

a) SEASON: Immediately until further notice.

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

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

3. Columbia River Tributaries above Bonneville Dam

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

b) AREA: Drano Lake, and the Wind, White Salmon, Klickitat, and Icicle rivers.

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

4. Mainstem Columbia River below Bonneville Dam

a) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: Immediately until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU

area. Sales allowed when platform gear and sales of fish are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

c) AREA: SMCRA 1E, Yakama Nation MOA: 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). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1. Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creek, out to the center of the Columbia river, during the period from August 16, 2010, until further notice.

2. Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3. From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of riprap.

4. From the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

5. SANCTUARIES: Standard river mouth and dam sanctuaries are applicable to these gear types, except that the Spring Creek Hatchery sanctuary is not in effect.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 13, 2010:

WAC 220-32-05100J	Columbia River salmon seasons above Bonneville Dam. (10-160)
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WSR 10-15-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-172—Filed July 13, 2010, 9:12 a.m., effective July 13, 2010, 9:12 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-49-05700A.

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: Additional time is needed to meet with the commercial industry representatives to formulate regulation changes to the commercial surf smelt 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 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: July 2, 2010.

Lori Preuss
 for Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-49-05700A Smelt fishing—Weekly periods. (10-165)

WSR 10-15-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-173—Filed July 13, 2010, 9:12 a.m., effective July 13, 2010, 9:12 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the pot fishery season in 23A-E because the spot shrimp quota has been harvested. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 2, 2010.

Lori Preuss
 for Philip Anderson
 Director

NEW SECTION

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

(1) Shrimp pot gear:

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

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

(ii) All waters of Shrimp Management Area 2E are closed to the harvest of all shrimp species other than spot shrimp.

(b) Effective immediately until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calen-

dar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week.

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

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

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

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

(2) Shrimp beam trawl gear:

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

(b) Those portions of Catch Areas 20B, 21A, and 22A within SMA 1B are open immediately until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m July 5, 2010:

WAC 220-52-05100E	Puget Sound shrimp pot and beam trawl fishery—Season. (10-158)
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Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 10-15-048 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-178—Filed July 14, 2010, 10:01 a.m., effective July 15, 2010]

Effective Date of Rule: July 15, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S; 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: Catch and effort in the estuary sturgeon fishery have been less than expected. White sturgeon remain available for harvest based on the guideline for this area. 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: July 13, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900G Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to McNary Dam.

(2) Effective immediately through July 31, 2010, all angling is prohibited from a line between the upstream end of Sand Island, located east of Rooster Rock State Park on the Columbia River, to a marker on the Oregon shore, downstream to a line between the lower end of Sand Island and a marker on the Oregon shore.

(3) Effective immediately through August 31, 2010, it is unlawful to fish for or possess sturgeon in those waters of the

Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.

(4) Effective July 15 through August 1, 2010, a person may retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna power lines, and all adjacent Washington tributaries. Daily limit 1 fish. Minimum size limit is 41 inches fork length; maximum size is 54 inches fork length.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 15, 2010

WAC 232-28-61900S Exceptions to statewide rules—Columbia River sturgeon. (10-163)

**WSR 10-15-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-177—Filed July 14, 2010, 10:02 a.m., effective July 14, 2010, 10:02 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: 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: This rule is necessary to avoid harvest of soft-shelled Dungeness crab. The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft-shelled crab and is in conformity with the coastal Dungeness crab summer fishery 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 2, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 14, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000R Coastal crab fishery—Weekly trip limits. Notwithstanding the provisions of WAC 220-52-040: effective immediately until further notice:

(1) It is unlawful for any person licensed to fish under a Dungeness crab—coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

- July 18 through July 24, 2010;
- July 25 through July 31, 2010;
- August 1 through August 7, 2010;
- August 8 through August 14, 2010;
- August 15 through August 21, 2010;
- August 22 through August 28, 2010;
- August 29 through September 4, 2010;
- September 5 through September 11, 2010;
- September 12 through September 15, 2010.

(2) Any crab taken prior to July 18, 2010, and not landed before 11:59 p.m. July 17, 2010, become part of the July 18 through July 24, 2010, accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

NEW SECTION

WAC 220-52-04600W Coastal crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful for non-Indian commercial fisheries to fish for or possess crab for commercial purposes, or place gear, in the following areas during the periods indicated:

(1) It is unlawful to place gear, fish for, or possess Dungeness crab for commercial purposes in the following areas from 8:00 a.m. August 1, 2010, through September 15, 2010: Those waters west of straight lines drawn in sequence from south to north between the following coordinates:

Land description	Coordinate
(a) Washington - Oregon border	46°15.00'N 124°10.00'W
(b) Seaview	46°20.00'N 124°10.00'W
(c) Willapa Bay entrance	46°40.00'N 124°10.00'W
(d) N. Willapa Bay Spits	46°43.50'N 124°11.50'W
(e) Grayland	46°50.00'N 124°12.30'W
(f) Grays Harbor	46°54.70'N 124°16.00'W
(g) Ocean Shores	47°00.00'N 124°16.00'W
(h) Moclips	47°15.00'N 124°19.00'W

Land description	Coordinate
(i) Cape Elizabeth	47°20.00'N 124°25.00'W
(j) Raft River	47°27.00'N 124°28.60'W (follow TD 41880 to way-point # 11 N. Destruction Island)
(k) N. Destruction Island	47°42.40'N 124°31.50'W
(l) Lapush	47°55.00'N 124°46.00'W
(m) Carol Island	48°00.00'N 124°49.50'W
(n) N. Lake Ozette	48°07.60'N 124°51.40'W
(o) Makah Bay	48°20.00'N 124°50.00'W
(p) Cape Flattery	Point on land

Date Adopted: July 14, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Baker and Skagit rivers Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Baker River (Skagit County): Mouth to Highway 20 Bridge - Salmon: Open only July 16 through July 18, 2010. Anti-snagging rule and night closure in effect. Daily limit 2 sockeye salmon.

(2) Skagit River (Skagit/Whatcom counties): From the Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport - Salmon: Open only July 16 through July 18, 2010, except closed from 200 feet above the mouth of Baker River up to the Highway 530 Bridge at Rockport. Daily limit two sockeye salmon. Release all salmon except sockeye salmon.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 19, 2010:

WAC 232-28-61900F	Exceptions to statewide rules—Baker and Skagit rivers.
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WSR 10-15-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-180—Filed July 14, 2010, 3:01 p.m., effective July 14, 2010, 3:01 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B and 232-28-61900I; 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: Due to an unseasonably cool spring all juvenile steelhead are not expected to exit Black-

WSR 10-15-050**EMERGENCY RULES****DEPARTMENT OF**
FISH AND WILDLIFE

[Order 10-178—Filed July 14, 2010, 10:22 a.m., effective July 16, 2010]

Effective Date of Rule: July 16, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900F; 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 run of sockeye in the Baker River is above the number needed for spawning and hatchery egg-take needs. Both state and tribal fisheries are being opened to harvest available shares. 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.

bird Island Pond until the last week in July. 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: July 14, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Blackbird Island Pond (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through July 31, 2010, it is unlawful to fish in waters of Blackbird Island Pond.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900B Exceptions to statewide rules—Blackbird Island Pond (Chelan Co.) (10-71)

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

WAC 232-28-61900I Exceptions to statewide rules—Blackbird Island Pond (Chelan Co.)

**WSR 10-15-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-182—Filed July 15, 2010, 2:45 p.m., effective July 16, 2010]

Effective Date of Rule: July 16, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000X; and amending WAC 220-24-040.

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: It is projected that there remains sufficient harvestable quota of salmon for the troll fleet that remains to be caught. 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: July 15, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-24-04000X All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

July 16 through July 20, 2010.

July 23 through July 27, 2010.

July 31 through August 3, 2010.

August 7 through August 10, 2010.

August 14 through August 17, 2010.

August 21 through August 24, 2010.

August 28 through August 31, 2010.

September 4 through September 7, 2010.

September 11 through September 14, 2010.

(2) Landing and possession limit of 60 Chinook and 50 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 through September 14.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in

length. No minimum size for pink, sockeye or chum salmon except no chum retention north of cape Alava, Washington in August and September. It is unlawful to possess wild coho salmon and Halibut.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) The Columbia River Control Zone is defined as the area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

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

WAC 220-24-04000X All-citizen commercial salmon troll.

WSR 10-15-066 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-183—Filed July 16, 2010, 11:01 a.m., effective July 16, 2010, 11:59 p.m.]

Effective Date of Rule: July 16, 2010, 11:59 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule lowers the spot shrimp weekly limits in Shrimp Management Areas 1C and 2E to prevent overharvest of the area quotas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provi-

sions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

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

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

(ii) All waters of Shrimp Management Area (SMA) 2E are closed to the harvest of all shrimp species other than spot shrimp.

(b) Effective immediately until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except in the following areas:

i) In SMA 1C it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week.

ii) Effective 11:59 p.m. July 19, 2010, in SMA 2E it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week.

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

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

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

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

(2) Shrimp beam trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open immediately

until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Those portions of Catch Areas 20B, 21A, and 22A within SMA 1B are open immediately until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. July 16, 2010:

WAC 220-52-05100F Puget Sound shrimp pot and beam trawl fishery—Season. (10-173)

WSR 10-15-070 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-181—Filed July 16, 2010, 3:47 p.m., effective July 22, 2010]

Effective Date of Rule: July 22, 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 return of Baker Lake sockeye is larger than the preseason forecast. Both hatchery and natural escapement goals have been met and surplus sockeye salmon are available for harvest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: July 16, 2010.

Lori Preuss
for Philip Anderson
Director

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: July 19, 2010.

Walt Fahrner
Rules Coordinator

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules—Baker Lake (Whatcom Co.) Notwithstanding the provisions of WAC 232-28-619, effective July 22, 2010, until further notice, in waters upstream of the log boom barrier in front of upper Baker Dam, upstream to the mouth of the Baker River, a person may fish for and possess sockeye salmon. Daily limit two adult sockeye salmon, minimum size 18 inches in length.

WSR 10-15-083

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed July 19, 2010, 12:01 p.m., effective July 19, 2010, 12:01 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: See below.

Purpose: Amend sections within chapter 308-330 WAC, the model traffic ordinance (MTO), to incorporate statutory changes made from 2004 to 2009, inclusive.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-197, 308-330-316, 308-330-320, 308-330-415, 308-330-464, and 308-330-700.

Statutory Authority for Adoption: RCW 46.90.010.

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: Avoiding the delay resulting from permanent rule adoption will enable local law enforcement to hold drivers accountable for the public safety hazard presented in violation of recently enacted statutes by enabling them to cite the MTO which has been adopted by many local authorities, rather than state statute, since many are accustomed to cite to the MTO. The proposal for a permanent rule, with an opportunity for comment, is forthcoming.

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 6, 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 6, Repealed 0.

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

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.020, 46.09.040, 46.09.050, 46.09.085, 46.09.115, 46.09.117, 46.09.120, 46.09.130, 46.09.140, 46.09.180, and 46.09.190.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420, 46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, ~~((and))~~ 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, and 46.37.680.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-320 RCW sections adopted—Size, weight, load. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle size, weight, and load as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.44.010,

46.44.013, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.043, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.105, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, and 46.44.190.

AMENDATORY SECTION (Amending WSR 00-18-067, filed 9/1/00)

WAC 308-330-415 RCW sections adopted—Right of way. The following sections of the Revised Code of Washington (RCW) pertaining to vehicles and pedestrians use of roadways, right of way, rights and duties as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.100, 46.61.105, 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, 46.61.135, 46.61.140, 46.61.145, 46.61.150, 46.61.155, 46.61.160, 46.61.165, 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.195, 46.61.200, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.230, 46.61.235, 46.61.240, 46.61.245, 46.61.250, 46.61.255, 46.61.260, 46.61.261, 46.61.264, 46.61.266, and 46.61.269.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-464 RCW sections adopted—Operation and restrictions. The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, and 46.61.740.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-700 RCW sections adopted—Disposition of traffic infractions. The following sections of the Revised Code of Washington (RCW) pertaining to the disposition of traffic infractions as now or hereafter amended are hereby adopted by such reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040, 46.63.060, 46.63.070, 46.63.073, 46.63.075, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, 46.63.151, ~~(and)~~ 46.63.160, and 46.63.170.

WSR 10-15-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-184—Filed July 19, 2010, 3:09 p.m., effective July 20, 2010, 6:00 a.m.]

Effective Date of Rule: July 20, 2010, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100K; 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.

Reasons for this Finding: Sets an additional weekly commercial fishing period for summer season treaty gillnet fisheries. Continues to allow sales of fish caught in areas above and below Bonneville Dam with platform hook-and-line gear. Continues to allow sales of fish from Yakama Nation tributary fisheries. Based on the in-season forecast, adult chinook, sockeye and steelhead remain available for treaty Indian harvest. Impact limits to ESA-listed salmonids remain available for treaty Indian fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on June 10 and July 19, 2010. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

Regulations include fisheries that are described in the memorandum of agreement between Washington state and the Yakama Nation. Regulations also include fisheries that are described in individual memorandum of understandings between Washington state and the Umatilla and Warm Springs tribes. The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and

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

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

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

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

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

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

Date Adopted: July 19, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 a.m. July 20 to 6:00 p.m. July 22, 2010.

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

c) GEAR: Gillnets. No mesh restriction.

2. Mainstem Columbia River above Bonneville Dam

a) SEASON: Immediately until further notice.

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

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

3. Columbia River Tributaries above Bonneville Dam

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

b) AREA: Drano Lake, and the Wind, White Salmon, Klickitat, and Icicle rivers.

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

4. Mainstem Columbia River below Bonneville Dam

a) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: Immediately until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU area. Sales allowed when platform gear and sales of fish are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

c) AREA: SMCRA 1E, Yakama Nation MOA: 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). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1. Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creek, out to the center of the Columbia river, during the period from August 16, 2010, until further notice.

2. Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3. From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of riprap.

4. From the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

5. SANCTUARIES: Standard river mouth and dam sanctuaries are applicable to these gear types, except that the Spring Creek Hatchery sanctuary is not in effect.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 20, 2010:

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam. (10-176)

**WSR 10-15-108
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-186—Filed July 20, 2010, 4:22 p.m., effective July 23, 2010, 12:01 a.m.]

Effective Date of Rule: July 23, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000Y; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sufficient salmon remain on the quota to allow liberalization to seven days per week. 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: July 20, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62000Z Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. July 23, 2010, until further notice, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 1: Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(2) Area 2: Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(3) Area 3: Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(4) Area 4:

(a) Open seven days per week until further notice: Daily limit 2 salmon, except release wild coho.

(i) Beginning August 1, also release Chinook east of the Bonilla-Tatoosh Line.

(ii) Beginning August 1, also release chum.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 23, 2010:

WAC 232-28-62000Y Coastal salmon seasons. (10-174)

**WSR 10-15-112
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed July 21, 2010, 8:44 a.m., effective July 21, 2010, 8:44 a.m.]

Effective Date of Rule: Immediately.

Purpose: To provide a correct physical address for the department's board of appeals (BOA). The BOA moved to Office Building 2 on June 18, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-02-0030.

Statutory Authority for Adoption: RCW 34.05.020.

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: Parties who appeal an administrative law judge's decision in a case before the department may need to physically serve petitions or responses on the BOA. The rule will give them the correct physical location for service of those pleadings.

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

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

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

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

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

Date Adopted: July 15, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0030 (~~Where is the board of appeals located~~) **How do I contact the board of appeals?** (1) (~~The mailing address of the DSHS board of appeals (BOA) is:~~

~~DSHS Board of Appeals~~

~~P.O. Box 45803~~

~~Olympia, WA 98504-5803;~~

~~(2) The general telephone numbers of the BOA are:~~

~~(360) 664-6100~~

~~1-877-351-0002 (toll free)~~

~~(360) 664-6178 (TTD)~~

~~(360) 664-6187 (fax);~~

~~(3) The physical location of the DSHS Board of Appeals (BOA) is:~~

~~Blake Office Bldg. East, 2nd Floor~~

~~4500 10th Ave. SE~~

~~Lacey, WA 98503))~~ The information included in this

section is current at this time of rule adoption, but may change. Current information and additional contact information are available on the department's internet site, in person at the board of appeals office, or by a telephone call to the board of appeal's main public number.

<u>Department of Social and Health Services</u>	
<u>Board of Appeals</u>	
<u>Location</u>	<u>Office Building 2 (OB-2)</u>
	<u>First Floor Information</u>
	<u>1115 Washington Street</u>
	<u>Olympia, Washington</u>

<u>Mailing address</u>	<u>P.O. Box 45803</u> <u>Olympia, WA 98503-5803</u>
<u>Telephone</u>	<u>(360) 664-6100</u>
<u>Fax</u>	<u>(360) 664-6187</u>
<u>Toll free</u>	<u>1-877-351-0002</u>
<u>Internet web site</u>	<u>www.dshs.wa.gov/boa</u>

WSR 10-15-117

EMERGENCY RULES

SECRETARY OF STATE

[Filed July 21, 2010, 8:56 a.m., effective July 21, 2010, 8:56 a.m.]

Effective Date of Rule: Immediately.

Purpose: To remove conflicts in current rule with new federal guidelines regarding financial reporting requirements for charitable organizations.

Citation of Existing Rules Affected by this Order: Amending WAC 434-120-107.

Statutory Authority for Adoption: RCW 19.09.540.

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 immediate adoption of the amendment to the rule is necessary for the general welfare of the public because charitable organizations are currently in the process of filing statutorily required financial reports with both the IRS and the Washington state charities program. The conflict in the definition of terms and audit requirements could be costly to charitable organizations and ultimately the public.

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 1, 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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 16, 2010.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-107 Audited financial report—Tiered reporting requirements (effective January 1, 2010). (1) Tier One: Charitable organizations (~~(submitting an initial registration, shall)~~) with one million dollars or less in annual gross revenue averaged over the last three accounting years must meet the financial reporting requirements~~(-)~~ specified in RCW 19.09.075 (~~(or)~~) and WAC 434-120-105. (~~If an organization does not file a federal form (990, 990PF, 990EZ, 990T), the organization must complete the solicitation report contained in the form prescribed by the secretary.~~)

(2) Tier Two: Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the last three ~~(fiscal)~~ accounting years, (~~shall have the federal tax reporting form (990, 990EZ, 990PF or 990T) prepared or reviewed by a certified public accountant or other professional, independent third-party who normally prepares or reviews the federal returns in the ordinary course of their business. If the federal tax form is not signed by a preparer who is so qualified, the charitable organization must, using a reporting form provided by the secretary, confirm that the federal tax form was reviewed by an independent third-party who normally prepares or reviews federal returns in the ordinary course of their business.~~) must provide one of the following:

(a) A photocopy of the federal tax reporting form (990, 990EZ, 990PF) that has been prepared by a certified public accountant or other professional, who normally prepares or reviews federal returns in the ordinary course of their business; or

(b) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or

(c) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.

(3) Tier Three: Charitable organizations with more than three million dollars in annual gross revenue averaged over the last three ~~(fiscal)~~ accounting years, (~~shall~~) must submit (~~an audited financial statement prepared by an independent certified public accountant for the year immediately following any year in which the organization achieves a three year average of more than three million dollars. For organizations with more than three million dollars in annual gross revenue averaged over the last three fiscal years, but directly or indirectly receive five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years, the audit requirement is waived. Organizations with five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years shall meet the financial reporting requirements described in subsection (2) of this section. For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers, but does not include gifts of tangible, real, or personal property or in-kind services.~~)

(4)) one of the following:

(a) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or

(b) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.

(4) If an organization has been in existence for less than three years, the organization must calculate its average gross revenue based on the number of years the organization has been in existence to determine which tier is applicable.

(5) Waiver of audit requirement: The secretary may waive the requirement to file audited financial statements prepared by an independent certified public accountant (~~(when the)~~) for organizations (~~(can demonstrate that they have reached a three year average of)~~) with more than three million dollars in gross revenue (~~(through unusual or nonrecurring revenue received in a single year without which they would have not met the three year annual gross average threshold.~~

(5) This rule becomes effective January 1, 2010) averaged over the last three accounting years and meets (a) or (b) of this subsection.

(a) Directly or indirectly receives five hundred thousand dollars or less in cash contributions averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash contributions averaged over the last three accounting years shall meet the financial reporting requirement described in subsection (2) of this section. For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers, but does not include gifts of tangible, real, or personal property or in-kind services; or

(b) The organizations can demonstrate that it has reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would have not met the three-year annual gross average threshold.

WSR 10-15-121

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 10-12—Filed July 21, 2010, 9:49 a.m., effective July 21, 2010, 9:49 a.m.]

Effective Date of Rule: Immediately.

Purpose: This eighth emergency rule establishes a partial withdrawal of ground water within a portion of WRIA 39 in Kittitas County, Washington. The partial withdrawal and restrictions are designed to prevent new uses of water that negatively affect flows in the Yakima River and its tributaries. The withdrawal allows for continued development using the ground water exemption or new permits when the new consumptive use is mitigated by one or more pre-1905 water rights held by ecology in the trust water right program of equal or greater consumptive quantity. Withdrawals of ground water for structures for which building permit applications were vested prior to July 16, 2009 shall be allowed

but shall be subject to curtailment. **Ecology filed a proposed withdrawal rule on June 23, 2010, WSR 10-13-122. A public hearing is scheduled in Cle Elum, Washington, on July 28, 2010.**

Statutory Authority for Adoption: RCW 90.54.050.

Other Authority: Chapter 43.27A RCW.

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

Reasons for this Finding: The Yakima Basin is one of the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, and during 2004 when USBR prorated May 10, 1905, water rights. The town of Roslyn's municipal supply and another one hundred thirty-three single domestic, group domestic, and municipal water systems throughout the basin are subject to curtailment when USBR prorates the May 10, 1905, water rights. Water supply in the Yakima Basin is limited and over-appropriated. Western portions of Kittitas County are experiencing rapid growth and this growth is being largely served by exempt wells. Exempt wells in this area may negatively affect the flow of the Yakima River or its tributaries.

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 12, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 21, 2010.

Ted Sturdevant
Director

Chapter 173-539A WAC

UPPER KITTITAS GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. The purpose of this rule is to withdraw from appropriation all unappropriated ground water within upper Kittitas County pending completion of a ground water study. New ground water withdrawals will be limited to those that are water budget neutral, as defined in this rule.

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for permit-exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to permit-exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new permit-exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County. Ecology proposed a rule in January 2009 and Kittitas County questioned ecology's authority for the proposed rule. Ecology later invoked the dispute resolution process under the MOA and the MOA was later terminated.

NEW SECTION

WAC 173-539A-025 Applicability. This rule applies to new uses of ground water relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to any new permit authorizing the withdrawal of public ground water within the upper Kittitas area boundaries issued on or after July 16, 2009.

NEW SECTION

WAC 173-539A-027 Advisory. All unmitigated withdrawals that began after May 10, 1905, may be subject to future curtailment due to conflicts with senior water rights. All unmitigated users are advised to obtain mitigation through senior trust water rights to avoid such curtailment.

NEW SECTION

WAC 173-539A-030 Definitions. The definitions provided below apply only to this chapter.

"Applicant" includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public ground water.

"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activ-

ity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, or construction (including road construction); covenants; agreements for common use of building materials, equipment, structures, facilities, lands, water, sewer, or other infrastructure.

"Consumptive use" of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.

"Ecology" means the department of ecology.

"Exemption" or **"ground water exemption"** means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Existing use of the ground water exemption" means a use of ground water under the authority of the exemption from permitting where water was:

(a) First regularly and beneficially used prior to July 16, 2009; and

(b) The water right is perfected within the five years following the first regular beneficial use for that purpose. Water to serve a parcel that is part of a group use begun within five years of the date water was first regularly and beneficially used on one or more parcels in the group is an existing use if the group use remains within the limit of the permit exemption.

"Group use" means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than five years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.

"Land use application" means an application to Kittitas County requesting a:

- Subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"New use of the ground water exemption" means a valid permit-exempt use of ground water begun on or after July 16, 2009. When an existing group use is expanded to serve a parcel in the future, the expanded use is a new use if it begins more than five years after the date water was first regularly and beneficially used for that purpose on any parcel in the group.

"Parcel" means any parcel, land, lot, tract or other unit of land.

"Proximate" means all parcels that have at least one of the following attributes:

- Share any common boundary; or
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet of each other at the nearest point.

"Proximate shortplat" means a shortplat that would be considered a group use with another subdivision or shortplat.

"Regular beneficial use" means a use of water under the ground water permit exemption that is recurring or functioning at fixed, uniform, or normal intervals and is done in conformity with established usages, rules, or discipline.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Water budget neutral project" means an appropriation or project where withdrawals of public ground water are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.

NEW SECTION

WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. (1) Beginning on the effective date of this rule, all public ground waters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of ground water may occur, including those exempt from permitting, except:

(a) Uses of ground water for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral under WAC 173-539A-050.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit. This shall not in any case exceed three years from the date the permit application vested. The exception is to avoid potential hardship and does not reflect ecology's view on when the priority date for a permit-exempt water right is established.

(3) Water to serve a parcel that is part of an existing group use is not a new appropriation or withdrawal if the water use to serve such parcel began within five years of the date water was first beneficially used on any parcel in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.

NEW SECTION**WAC 173-539A-050 Water budget neutral projects.**

(1) Persons proposing a new use of ground water shall apply to ecology for a permit to appropriate public ground water or, if seeking to rely on the ground water permit-exemption, shall submit to ecology a request for determination that the proposed permit-exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public ground water or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:

(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of ground water;

(b) A site map;

(c) The area to be irrigated (in acres);

(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection (3) of this section;

(e) A property covenant that prohibits trees or shrubs over the septic drain field; and

(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.

(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use treated through a wastewater treatment plant which discharges to surface water is consumptively used.

(4) Applications for public ground water or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(5) Applications to appropriate public ground water or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.

(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.

NEW SECTION

WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights. (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new water right or a request for a determination of water budget neutrality under Water Resources Program Pro-

cedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and to accurately reflect any limitations or constraints in the trust water right.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

NEW SECTION

WAC 173-539A-070 Measuring and reporting water use. (1) For residential uses (domestic use and irrigation of not more than 1/2 acre of noncommercial lawn and garden) of ground water within upper Kittitas County that begin after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with the requirements of WAC 173-173-100.

(2) For all other uses within upper Kittitas County that begin after November 25, 2009, including permit-exempt uses, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100.

(3) Water users must collect and report metering data to ecology within thirty days of the end of each recording period. The following table shows the recording periods and the due dates for each metering report:

Recording Period	Report Due No Later Than:
October 1 - March 31	April 30
April - June 30	July 30
July 1 - July 31	August 30
August 1 - August 31	September 30
September 1 - September 30	October 30

NEW SECTION

WAC 173-539A-080 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

NEW SECTION

WAC 173-539A-090 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.

