

WSR 11-14-040
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 28, 2011, 11:16 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: To establish hearing rules related to medicaid funded services to implement the requirements of 2E2SHB 1738, section 53, effective July 1, 2011, for the transition of the single state medicaid agency to the Washington health care authority.

Citation of Existing Rules Affected by this Order:
Repealing WAC 388-526-2610.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 2E2SHB 1738, section 53.

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

Reasons for this Finding: 2E2SHB 1738, section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the *immediate* preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011. Delaying this adoption, could jeopardize the department's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 137, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 137, Amended 0, Repealed 1.

Date Adopted: June 20, 2011.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-526 WAC

((MEDICAL FAIR HEARINGS)) ADMINISTRATIVE HEARING RULES FOR MEDICAL SERVICES PROGRAMS

NEW SECTION

WAC 388-526-0005 What is the purpose and scope of this chapter? This chapter describes the general hearing rules and procedures that apply to the resolution of disputes between you and the various medical services programs established under chapter 74.09 RCW. The rules of this chapter are intended to supplement both the administrative procedure act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(1) This chapter:

(a) Establishes rules encouraging informal dispute resolution between the health care authority (HCA) or its authorized agents, and persons or entities who disagree with its actions; and

(b) Regulates all hearings involving medical services programs established under chapter 74.09 RCW.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if you have a hearing right, including the APA and program rules or laws.

(3) Specific program hearing rules prevail over the rules in this chapter.

(4) The hearing rules in this chapter do not apply to the following programs:

(a) Public employees benefits program (see chapter 182-16 WAC);

(b) Basic health plan program (see chapter 182-22 WAC); and

(c) The Washington health program (see chapter 182-25 WAC).

NEW SECTION

WAC 388-526-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrative law judge (ALJ)" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not department or health care authority employees or representatives.

"Authorized agent" means a person or agency which may act on behalf of HCA pursuant to the agreement authorized by RCW 41.05.021. The authorized agent(s) may include employees of the department or its contractors.

"BOA" means the board of appeals which is physically located within the department of social and health services.

"Business days" means all days except Saturdays, Sundays, and legal holidays.

"Calendar days" means all days including Saturdays, Sundays, and legal holidays.

"**Deliver**" means giving a document to someone in person.

"**Department**" means the department of social and health services.

"**Documents**" means papers, letters, writings, or other printed or written items.

"**Final order**" means an order that is the final agency decision.

"**HCA**" means the health care authority.

"**Health care authority (HCA) hearing representative**" means an employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing.

"**Hearing**" means a proceeding before an ALJ or review judge that gives a party an opportunity to be heard in disputes about medical services programs set forth in RCW 74.09. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the administrative procedure act, Title 182 WAC except as specifically excluded by WAC 388-526-0005(4), and Title 388 WAC, chapter 10-08 WAC, or other law.

"**Initial order**" is a hearing decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

"**Judicial review**" means a superior court's review of a final order.

"**Mail**" means placing a document in the mail with the proper postage.

"**OAH**" means the office of administrative hearings, a separate state agency from HCA or the department.

"**Party**" means:

- (1) The health care authority (HCA); or
- (2) A person or entity:
 - (a) Named in the action;
 - (b) To whom the action is directed; or
 - (c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

"**Prehearing conference**" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

"**Prehearing meeting**" means an informal voluntary meeting that may be held before any prehearing conference or hearing.

"**Program**" means an organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers.

"**Record**" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"**Review**" means a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

"**Review judge**" means a decision-maker with expertise in program rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In some cases, review judges conduct hearings and enter final orders. In other

cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are physically located at the DSHS board of appeals (BOA) and are not part of the program involved in the initial agency action.

"**Rule**" means a state regulation. Rules are found in the Washington Administrative Code (WAC).

"**Should**" means that an action is recommended but not required.

"**Stay**" means an order temporarily halting the HCA decision or action.

"**You**" means any individual or entity that has a right to be involved with the hearing process, which includes a party or a party's representative. "You" does not include HCA or HCA's representatives, or HCA's authorized agents.

NEW SECTION

WAC 388-526-0015 How do the terms in the administrative procedure act compare to this chapter? To improve clarity and understanding, the rules in this chapter may use different words than the administrative procedures act (APA) or the model rules. Following is a list of terms used in those laws and the terms as used in these rules:

Chapter 34.05 RCW Chapter 10-08 WAC	Chapter 388-526 WAC
Adjudicative proceeding	Different terms are used to refer to different stages of the hearing process and may include prehearing meeting, prehearing conference, hearing, review, reconsideration, and the entire hearing process
Application for adjudicative proceeding	Request a hearing
Enter	Make, send
Presiding officer	Administrative law judge or review judge
Reviewing officer	Review judge

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.

NEW SECTION

WAC 388-526-0020 What does good cause mean? (1) Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the administrative law judge must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

(2) Good cause may include, but is not limited to, the following examples.

- (a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(b) You could not respond to the notice because it was written in a language that you did not understand.

NEW SECTION

WAC 388-526-0025 Where is the office of administrative hearings located? (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
 2420 Bristol Court SW
 PO Box 42488
 Olympia, WA 98504-2488
 (360) 664-8717
 (360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 a.m. to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

Olympia

Office of Administrative Hearings
 2420 Bristol Court SW
 P.O. Box 42489
 Olympia, WA 98504-2489
 (360) 407-2768
 1-800-583-8271
 fax: (360) 586-6563

Seattle

Office of Administrative Hearings
 One Union Square
 600 University Street, Suite 1500
 Mailstop: TS-07
 Seattle, WA 98101-1129
 (206) 389-3400
 1-800-845-8830
 fax: (206) 587-5135

Vancouver

Office of Administrative Hearings
 5300 MacArthur Blvd., Suite 100
 Vancouver, WA 98661
 (360) 690-7189
 1-800-243-3451
 fax: (360) 696-6255

Spokane

Office of Administrative Hearings
 Old City Hall Building, 5th Floor
 221 N. Wall Street, Suite 540
 Spokane, WA 99201
 (509) 456-3975
 1-800-366-0955
 fax: (509) 456-3997

Yakima

Office of Administrative Hearings
 32 N. 3rd Street, Suite 320
 Yakima, WA 98901-2730
 (509) 249-6090
 1-800-843-3491
 fax: (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: www.oah.wa.gov.

NEW SECTION

WAC 388-526-0030 How do I contact the board of appeals? 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 (BOA) office, or by a telephone call to the BOA's main public number.

Department of Social and Health Services Board of Appeals	
Location	Office Building 2 (OB-2) 2nd Floor 1115 Washington Street Olympia, Washington
Mailing address	P.O. Box 45803 Olympia, WA 98504-5803
Telephone	(360) 664-6100
Fax	(360) 664-6187
Toll free	1-877-351-0002
Internet web site	www.dshs.wa.gov/boa

NEW SECTION

WAC 388-526-0035 How are days counted when calculating deadlines for the hearing process? (1) When counting days to find out when a hearing deadline ends under program rules or statutes:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and you have twenty-one days to request a review, start counting the days with Wednesday.

(b) If the last day of the period ends on a Saturday, Sunday, or legal holiday, the deadline is the next business day.

(c) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

(d) For periods over seven days, count every day, including Saturdays, Sundays, and legal holidays.

(2) The deadline ends at 5:00 p.m. on the last day.

(3) If you miss a deadline, you may lose your right to a hearing or appeal of a decision.

NEW SECTION

WAC 388-526-0037 When must the office of administrative hearings reschedule a proceeding based on the amount of notice required? Any party may request that the proceeding be rescheduled and the office of administrative hearings (OAH) must reschedule if:

(1) A rule requires the OAH to provide notice of a proceeding; and

(2) The OAH does not provide the amount of notice required.

NEW SECTION

WAC 388-526-0038 When may the office of administrative hearings shorten the amount of notice required to the parties of a proceeding? The administrative law judge and the parties may agree to shorten the amount of notice required by any rule.

NEW SECTION

WAC 388-526-0040 How do parties send documents? (1) When the rules in this chapter or in other law ask a party to send copies of documents to other parties, the party must mail or deliver copies to the health care authority (HCA) hearing representative and to all other parties or their representatives.

(2) When sending documents to the office of administrative hearings (OAH) or the board of appeals (BOA), you must mail or deliver the documents to one of the locations listed in WAC 388-526-0025(2) for OAH or in WAC 388-526-0030 for BOA.

(3) When sending documents to your assigned field office, you may use the address listed at the top of your notice of hearing. If a field office has not been assigned, all written communication about your hearing must be sent to the OAH Olympia field office which sends the communication to the correct office.

(4) Documents may be sent by giving them to someone in person, placing them in the mail with proper postage, or by fax or e-mail if the party mails a copy on the same day.

NEW SECTION

WAC 388-526-0045 What is service? Service gives the party notice. When a document is given to the party, the party is considered served with official notice of the contents of the document.

NEW SECTION

WAC 388-526-0050 How does a party serve someone? Unless otherwise stated in law, a party may serve someone by:

- (1) Personal service (hand delivery);
- (2) First class, registered, or certified mail;
- (3) Fax if the party mails a copy of the document the same day;
- (4) Commercial delivery service; or
- (5) Legal messenger service.

NEW SECTION

WAC 388-526-0055 When must a party serve someone? A party must serve all other parties and their representatives whenever the party files a pleading, brief or other document with the office of administrative hearings or the board of appeals, or when required by law.

NEW SECTION

WAC 388-526-0060 When is service complete? Service is complete when:

- (1) Personal service is made;
- (2) Mail is properly stamped, addressed, and deposited in the United States mail;
- (3) Fax produces proof of transmission;
- (4) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (5) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-526-0065 How does a party prove service? A party may prove service by providing any of the following:

- (1) A sworn statement;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or
- (5) Proof of fax transmission.

NEW SECTION

WAC 388-526-0070 What is filing? (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during office hours.

NEW SECTION

WAC 388-526-0075 How does a party file documents? (1) A party may file documents by delivering them to the office of administrative hearings or the board of appeals by:

- (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax transmission if the party mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (2) A party cannot file documents by e-mail.

NEW SECTION

WAC 388-526-0080 What are your options for resolving a dispute with the health care authority? (1) If you disagree with a decision or action of the health care authority, or one of its authorized agents, you have several options for resolving your dispute, which may include the following:

- (a) Any special prehearing alternative or administrative process offered by the program;
- (b) Prehearing meeting;
- (c) Prehearing conference; and

(d) Hearing.

(2) Because you have a limited time to request a hearing, you must request a hearing within the deadline on the notice of the agency action to preserve your hearing right.

NEW SECTION

WAC 388-526-0085 Do you have a right to a hearing? (1) You have a right to a hearing only if a law or program rule gives you that right. If you are not sure, you should request a hearing to protect your right.

(2) Some programs may require you to go through an informal administrative process before you can request or have a hearing. The notice of the action sent to you should include information about this requirement if it applies.

(3) You have a limited time to request a hearing. The deadline for your request varies by the program involved. You should submit your request right away to protect your right to a hearing, even if you are also trying to resolve your dispute informally.

(4) If you request a hearing, one is scheduled.

(5) If the health care authority hearing representative or the administrative law judge (ALJ) questions your right to a hearing, the ALJ decides whether you have that right.

(6) If the ALJ decides you do not have a right to a hearing, your request is dismissed.

(7) If the ALJ decides you do have a right to a hearing, the hearing proceeds.

NEW SECTION

WAC 388-526-0090 Who may request a hearing?

Either you or your representative may request a hearing.

NEW SECTION

WAC 388-526-0095 What if you have questions about requesting a hearing? If you have questions about how, when, and where to request a hearing, you should:

(1) Contact the specific program involved, the office of administrative hearings, or the board of appeals;

(2) Review the notice sent to you of the action or decision; or

(3) Review the applicable law or program rule.

NEW SECTION

WAC 388-526-0100 How do you request a hearing?

(1) You may request a hearing in writing or orally, depending upon which program is involved. The notice and applicable laws and rules should tell you whether the request must be in writing or may be made orally.

(2) If you are allowed to make an oral request, you may do so to a health care authority (HCA) employee, HCA's authorized agent, or to an office of administrative hearings (OAH) employee in person, by telephone, or by voice mail.

(3) You may send a written request by mail, delivery service, personal service, or by fax if you mail a copy the same day. You should send written requests to the location on the notice or to OAH at the location specified in WAC 388-526-0025(2).

NEW SECTION

WAC 388-526-0105 What information do you give when requesting a hearing? (1) Your hearing request must contain enough information to identify you and the agency action. You should include:

(a) Your name, address, and telephone number;

(b) A brief explanation of why you disagree with the agency action;

(c) Your client identification or case number, contract number, or any other information that identifies your case or the program involved; and

(d) Any assistance you need, including a foreign or sign language interpreter or any other accommodation for a disability.

(2) You should also refer to a program's specific rules or the notice to see if additional information is required in your request.

(3) The office of administrative hearings (OAH) may not be able to process your hearing request if it cannot identify or locate you and determine the agency action involved.

NEW SECTION

WAC 388-526-0110 What happens after you request a hearing? (1) After you request a hearing, the office of administrative hearings sends the parties a notice containing the hearing date, time, and place. This document is called the notice of hearing. The parties may also receive a written notice of a prehearing conference. You may receive a notice of a prehearing conference either before or after receiving the notice of the hearing.

(2) Before your hearing is held:

(a) The health care authority (HCA) hearing representative may contact you and try to resolve your dispute; and

(b) You are encouraged to contact the HCA hearing representative and try to resolve your dispute.

(3) If you do not appear for your hearing, an administrative law judge may enter an order of default or an order dismissing your hearing according to WAC 388-526-0285.

NEW SECTION

WAC 388-526-0115 May you withdraw your hearing request? (1) You may withdraw your hearing request for any reason and at any time by contacting the health care authority hearing representative or the office of administrative hearings (OAH) in writing or orally with the administrative law judge and the other parties. After your request for withdrawal is received, your hearing is cancelled and OAH sends an order dismissing the hearing. If you withdraw your request you may not be able to request another hearing on the same action.

(2) If you withdraw your hearing request, you may only set aside the dismissal according to WAC 388-526-0290.

NEW SECTION

WAC 388-526-0120 Do you have the right to an interpreter in the hearing process? If you need an interpreter because you or any of your witnesses are a person with

limited English proficiency, the office of administrative hearings will provide an interpreter at no cost to you.

NEW SECTION

WAC 388-526-0125 What definitions apply to limited English proficient parties? The following definitions apply to LEP parties:

"Hearing impaired person" means a person who, because of a hearing or speech impairment, cannot readily speak, understand, or communicate in spoken language.

"Intermediary interpreter" means an interpreter who:

- (1) Is a certified deaf interpreter (CDI); and
- (2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter.

"Limited English proficient (LEP)" includes limited English speaking persons or other persons unable to communicate in spoken English because of a hearing impairment.

"Limited English-speaking (LES) person" means a person who, because of non-English speaking cultural background or disability, cannot readily speak or understand the English language.

"Qualified interpreter" includes qualified interpreters for a limited English-speaking person or a person with a hearing impairment.

"Qualified interpreter for a limited English-speaking person" means a person who is readily able to interpret or translate spoken and written English communications to and from a limited English-speaking person. If an interpreter is court certified, the interpreter is considered qualified.

"Qualified interpreter for a person with a hearing impairment" means a visual language interpreter who is certified by the registry of interpreters for the deaf or National Association of the Deaf and is readily able to interpret or translate spoken communications to and from a hearing impaired person.

NEW SECTION

WAC 388-526-0130 What requirements apply to notices for limited English-speaking parties? If the office of administrative hearings is notified that you are a limited English-speaking person, all hearing notices, decisions and orders for you must:

- (1) Be written in your primary language; or
- (2) Include a statement in your primary language:
 - (a) Indicating the importance of the notice; and
 - (b) Telling you how to get help in understanding the notice and responding to it.

NEW SECTION

WAC 388-526-0135 What requirements apply to interpreters? (1) The office of administrative hearings (OAH) must provide a qualified interpreter to assist any person who:

- (a) Has limited English proficiency; and
- (b) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) The following persons may not be used as interpreters:

- (a) A relative of any party;
- (b) Health care authority (HCA) employees; or
- (c) HCA authorized agents.

(4) The administrative law judge (ALJ) must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:

- (a) Ability to meet the needs of the hearing impaired person or limited English speaking person;
- (b) Education, certification, and experience;
- (c) Understanding of the basic vocabulary and procedures involved in the hearing; and
- (d) Ability to be impartial.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

NEW SECTION

WAC 388-526-0140 May you waive interpreter services? (1) If you are limited English proficient, you may ask to waive interpreter services.

(2) You must make your request in writing or through a qualified interpreter on the record.

(3) The administrative law judge must determine if your waiver has been knowingly and voluntarily made.

(4) You may withdraw your waiver at any time before or during the hearing.

NEW SECTION

WAC 388-526-0145 What requirements apply to the use of interpreters? (1) Interpreters must:

- (a) Use the interpretive mode that the parties, the hearing impaired person, the interpreter, and the administrative law judge (ALJ) consider the most accurate and effective;
- (b) Interpret statements made by the parties and the ALJ;
- (c) Not disclose information about the hearing without the written consent of the parties; and
- (d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may video tape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION

WAC 388-526-0150 What requirements apply to hearing decisions involving limited English-speaking parties? (1) When an interpreter is used at a hearing, the administrative law judge must explain that the decision is written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost to you.

(2) Interpreters must provide a telephone number where they can be reached. This number must be attached to any decision or order mailed to the parties.

(3) The office of administrative hearings or the board of appeals must mail a copy of a decision or order to the interpreter for use in oral translation.

NEW SECTION

WAC 388-526-0155 Who represents you during the hearing process? (1) You may represent yourself or have anyone represent you, except health care authority (HCA) employees, HCA's authorized agents, and DSHS employees.

(2) Your representative may be a friend, relative, community advocate, attorney, or paralegal.

(3) You should inform the HCA hearing representative or the office of administrative hearings of your representative's name, address, and telephone number.

NEW SECTION

WAC 388-526-0157 How does a party appear? (1) If you are going to represent yourself, you should provide the administrative law judge (ALJ) and other parties with your name, address, and telephone number.

(2) If you are represented, your representative should provide the ALJ and other parties with the representative's name, address, and telephone number.

(3) The presiding officer may require your representative to file a written notice of appearance or to provide documentation that you have authorized the representative to appear on your behalf. In cases involving confidential information, your representative must file a legally sufficient signed written consent or release of information document.

(4) If your representative is an attorney admitted to practice in Washington state, your attorney must file a written notice of appearance, and must file a notice of withdrawal upon withdrawal of representation.

(5) If you or your representative put in a written notice of appearance, the ALJ should call the telephone number on the notice of appearance if you, or your representative, do not appear by calling in with a telephone number before a hearing (including a prehearing).

NEW SECTION

WAC 388-526-0160 If a health care authority employee, a health care authority's authorized agent, and DSHS employee cannot represent you, can they assist you during the hearing process? Although a health care authority (HCA) employee, HCA authorized agent, and DSHS employee cannot represent you during the hearing process, they may assist you by:

- (1) Acting as a witness;
- (2) Referring you to community legal resources;
- (3) Helping you get nonconfidential information; or
- (4) Informing you about or providing copies of the relevant laws or rules.

NEW SECTION

WAC 388-526-0165 What if you would like to be represented by an attorney but you cannot afford one? (1) Neither the health care authority (HCA), HCA's authorized agents, or the office of administrative hearings (OAH) will pay for an attorney for you.

(2) If you want an attorney to represent you and cannot afford one, community resources may be available to assist you. These legal services may be free or available at a reduced cost. HCA, HCA's authorized agent, or OAH can tell you who to contact for legal assistance.

(3) Information about legal assistance can also be found at www.oah.wa.gov.

NEW SECTION

WAC 388-526-0170 Who represents the health care authority during the hearing? (1) The health care authority (HCA) hearing representative as defined in WAC 388-526-0010 represents HCA during the hearing. The HCA hearing representative may or may not be an attorney.

(2) An administrative law judge (ALJ) is independent and does not represent HCA or any other party.

NEW SECTION

WAC 388-526-0175 What is a prehearing meeting? (1) A prehearing meeting is an informal meeting with a health care authority (HCA) hearing representative that may be held before any prehearing conference or hearing.

(2) An HCA hearing representative may contact you before the scheduled hearing to arrange a prehearing meeting. You may also contact the HCA hearing representative to request a prehearing meeting.

(3) A prehearing meeting is voluntary. You are not required to request one, and you are not required to participate in one.

(4) The prehearing meeting includes you and/or your representative, the HCA hearing representative, and any other party. An administrative law judge (ALJ) does not attend a prehearing meeting.

(5) The prehearing meeting gives the parties an opportunity to:

- (a) Clarify issues;
- (b) Exchange documents and witness statements;
- (c) Resolve issues through agreement or withdrawal; and
- (d) Ask questions about the hearing process and the laws and rules that apply.

(6) A prehearing meeting may be held or information exchanged:

- (a) In person;
- (b) By telephone conference call;
- (c) Through correspondence; or
- (d) Any combination of the above that is agreeable to the parties.

(7) If a prehearing conference is required by the program or rule, a prehearing meeting may not be an option available to you.

NEW SECTION

WAC 388-526-0180 What happens during a prehearing meeting? During a prehearing meeting:

- (1) A health care authority (HCA) hearing representative:
 - (a) Explains the role of the HCA hearing representative in the hearing process;
 - (b) Explains how a hearing is conducted and the relevant laws and rules that apply;
 - (c) Explains your right to representation during the hearing;
 - (d) Responds to your questions about the hearing process;
 - (e) Identifies accommodation and safety issues;
 - (f) Distributes copies of the documents to be presented during the hearing;
 - (g) Provides, upon request, copies of relevant laws and rules;
 - (h) Identifies additional documents or evidence you may want or be required to present during the hearing;
 - (i) Tells you how to obtain documents from your file;
 - (j) Clarifies the issues; and
 - (k) Attempts to settle the dispute, if possible.
- (2) You should explain your position and provide documents that relate to your case. You also have the right to consult legal resources.
- (3) You and the HCA hearing representative may enter into written agreements or stipulations, including agreements that settle your dispute.

NEW SECTION

WAC 388-526-0185 What happens after a prehearing meeting? (1) If you and the health care authority (HCA) hearing representative resolve the dispute during the prehearing meeting and put it in writing or present the agreement to an administrative law judge (ALJ), your agreement may be legally enforceable.

(2) Any agreements or stipulations made at the prehearing meeting must be presented to an ALJ before or during the hearing, if you want the ALJ to consider the agreement.

(3) If all of your issues are not resolved in the prehearing meeting, you may request a prehearing conference before an ALJ or go to your scheduled hearing. The ALJ may also order a prehearing conference.

(4) You may withdraw your hearing request at any time if the HCA hearing representative agrees to some action that resolves your dispute, or for any other reason. If you withdraw your hearing request, the hearing is not held and the ALJ sends a written order of dismissal.

NEW SECTION

WAC 388-526-0190 What happens if you do not participate in a prehearing meeting? You are not required to participate in a prehearing meeting. If you do not participate, it does not affect your right to a hearing.

NEW SECTION

WAC 388-526-0195 What is a prehearing conference? (1) A prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to prepare for a hearing. The ALJ must record the prehearing conference using audio recording equipment (such as a digital recorder or tape recorder).

(2) An ALJ may conduct the prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties. Your attendance is mandatory.

(3) You may lose the right to participate during the hearing if you do not attend the prehearing conference.

NEW SECTION

WAC 388-526-0197 When is a prehearing conference scheduled? (1) The administrative law judge (ALJ) may require a prehearing conference. Any party may request a prehearing conference.

(2) The ALJ must grant the first request for a prehearing conference if it is received by the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(3) The ALJ may grant untimely or additional requests for prehearing conferences.

(4) If the parties do not agree to a continuance, the OAH and/or the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance.

(5) The OAH must schedule prehearing conferences for all cases which concern:

- (a) The department's division of residential care services under Title XIX of the federal social security act; and
- (b) Provider and vendor overpayment hearings.

NEW SECTION

WAC 388-526-0200 What happens during a prehearing conference? During a prehearing conference the parties and the administrative law judge may:

(1) Simplify or clarify the issues to be decided during the hearing;

(2) Agree to the date, time, and place of the hearing;

(3) Identify accommodation and safety issues;

(4) Agree to postpone the hearing;

(5) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(6) Agree to facts and documents to be entered during the hearing;

(7) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(8) Schedule additional prehearing conferences;

(9) Resolve the dispute;

(10) Consider granting a stay if authorized by law or program rule; or

(11) Determine any other procedural issues raised by the parties.

NEW SECTION

WAC 388-526-0205 What happens after a prehearing conference? (1) After the prehearing conference ends, the administrative law judge (ALJ) must enter a written prehearing order describing:

- (a) The actions taken;
- (b) Any changes to the documents;
- (c) Any agreements reached; and
- (d) Any ruling of the ALJ.

(2) The ALJ must send the prehearing order to the parties at least fourteen calendar days before the scheduled hearing, except a hearing may still occur as allowed under WAC 388-526-0280(5). The parties and the ALJ may agree to a shorter time period.

(3) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(4) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(5) The ALJ may take further appropriate actions to address other concerns.

NEW SECTION

WAC 388-526-0210 What happens if a party does not attend a prehearing conference? (1) All parties are required to attend a prehearing conference.

(2) If you do not attend, you may not be allowed to participate in the hearing. The administrative law judge may dismiss your hearing request or enter an order of default against you.

NEW SECTION

WAC 388-526-0215 What is the authority of the administrative law judge? (1) The administrative law judge (ALJ) must hear and decide the issues de novo (anew) based on what is presented during the hearing.

(2) As needed, the ALJ may:

- (a) Determine the order for presenting evidence;
- (b) Issue subpoenas or orders directing witnesses to appear or bring documents;
- (c) Rule on objections, motions, and other procedural matters;
- (d) Rule on an offer of proof made to admit evidence;
- (e) Admit relevant evidence;
- (f) Impartially question witnesses to develop the record;
- (g) Call additional witnesses and request exhibits to complete the record;
- (h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;
- (i) Keep order during the hearing;
- (j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;

(k) Permit others to attend, photograph, or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 388-526 WAC, unless another law prevents it;

(m) Decide whether a party has a right to a hearing;

(n) Issue protective orders;

(o) Consider granting a stay if authorized by law or agency rule; and

(p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) The ALJ enters initial orders. Initial orders may become final orders pursuant to WAC 388-526-0525.

NEW SECTION

WAC 388-526-0216 Is the authority of the administrative law judge and the review judge limited? The authority of the administrative law judge and the review judge is limited to those powers conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers.

NEW SECTION

WAC 388-526-0218 When do review judges conduct the hearing and enter final orders? (1) Review judges conduct the hearing and enter the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5). Any party dissatisfied with a decision or an order of dismissal of a review judge may request reconsideration from the review judge as provided by this chapter and WAC 388-96-904(12).

(2) The review judge enters final agency decisions on all cases in the form of a final order.

(3) Following a review judge's decision, you, but not the health care authority or any of its authorized agents, may file a petition for judicial review as provided by this chapter.

(4) A review judge has the same authority as an administrative law judge, as described in WAC 388-526-0215, when conducting a hearing.

NEW SECTION

WAC 388-526-0220 What rules and laws must an administrative law judge and review judge apply when conducting a hearing or making a decision? (1) Administrative law judges (ALJs) and review judges must first apply the applicable program rules adopted in the Washington Administrative Code (WAC).

(2) If no program rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules that were in effect on the

date the agency notice was sent, unless otherwise required by other rule or law. If the health care authority (HCA) or HCA's authorized agents amends the notice, the ALJ and review judge must apply the rules that were in effect on the date the initial notice was sent, unless otherwise required by other rule or law.

(4) When applying program rules regarding the procedural rights and responsibilities of the parties, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time HCA or HCA's authorized agent has to process your application for services, benefits, or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

NEW SECTION

WAC 388-526-0221 How is the index of significant decisions used? (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the index of significant decisions.

(2) The index of significant decisions is available to the public at www.dshs.wa.gov/boa. For information on how to obtain a copy of the index, see WAC 388-01-190.

(3) If a precedential published decision entered by the Court of Appeals or the Supreme Court reverses an indexed board of appeals final order, that order will be removed from the index of significant decisions.

NEW SECTION

WAC 388-526-0225 May an administrative law judge or review judge decide that a rule is invalid? (1) Neither an administrative law judge or a review judge may decide that a rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a rule is raised during the hearing, the ALJ or review judge may allow argument for court review.

NEW SECTION

WAC 388-526-0230 When is the administrative law judge assigned to the hearing? The office of administrative hearings (OAH) assigns an administrative law judge (ALJ) at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party, the OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date.

NEW SECTION

WAC 388-526-0235 May a party request a different judge? A party may file a motion of prejudice against an administrative law judge (ALJ) under RCW 34.12.050. A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425.

NEW SECTION

WAC 388-526-0240 How does a party file a motion of prejudice? (1) A party may request a different administrative law judge (ALJ) by sending a written motion of prejudice to the office of administrative hearings (OAH) before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include but are not limited to those:

- (a) Granting or denying a request for a continuance; and
- (b) Granting or denying a request for a prehearing conference.

(3) A party must send the written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 388-526-0025(1) and must send a copy to the OAH field office where the ALJ is assigned.

(4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

- (a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or
- (b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first request for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

NEW SECTION

WAC 388-526-0245 May an administrative law judge or review judge be disqualified? (1) An administrative law judge (ALJ) or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge.

(2) Ex parte contact means a written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(3) To ask to disqualify an ALJ or review judge, a party must send a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest, or an ex parte contact.

(4) A party must send or deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

NEW SECTION

WAC 388-526-0250 What happens after you request a hearing, and when must the office of administrative

hearings provide notice of the hearing and prehearing conferences? (1) The office of administrative hearings (OAH) must send a copy of your hearing request to the health care authority (HCA) or HCA's authorized agent who made the decision on HCA's behalf, unless OAH received your hearing request from HCA or HCA's authorized agent. The OAH should send it to HCA or HCA's authorized agent within four business days of the OAH receiving your request.

(2) The OAH must send a notice of hearing to all parties and their representatives at least fourteen calendar days before the hearing date.

(3) If the OAH schedules a prehearing conference, the OAH must send a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) The OAH and/or an administrative law judge (ALJ) may convert a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 388-526-0280 (3)(b).

(4) The OAH and/or the ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(5) If the ALJ denies a continuance after a prehearing conference, the hearing may proceed on the scheduled hearing date, but the ALJ must still issue a written order regarding the denial of the continuance.

(6) You may ask for a prehearing meeting even after you have requested a hearing.

NEW SECTION

WAC 388-526-0255 What information must the office of administrative hearings include in the notice of hearing? (1) A notice of hearing is a written notice that must include:

(a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;

(b) The name, mailing address, and telephone number of the administrative law judge (ALJ), if known;

(c) The date, time, place, and nature of the hearing;

(d) The legal authority and jurisdiction for the hearing; and

(e) The date of the hearing request.

(2) The office of administrative hearings (OAH) also sends you information with your notice of hearing telling you the following:

(a) If you fail to attend or participate in a prehearing conference or a hearing, you may lose your right to a hearing. Then the ALJ may send:

(i) An order of default against you; or

(ii) An order dismissing the hearing.

(b) If you need a qualified interpreter because you or any of your witnesses are persons with limited English proficiency, OAH will provide an interpreter at no cost to you.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for yourself or your witnesses, including the need for an interpreter in a primary language or for sensory impairments.

(e) How to contact OAH if a party has a safety concern.

NEW SECTION

WAC 388-526-0260 May the health care authority or the health care authority's authorized agent amend a notice? (1) The administrative law judge (ALJ) must allow the health care authority (HCA) or HCA's authorized agent to amend (change) the notice of an action before or during the hearing to match the evidence and facts.

(2) HCA or HCA's authorized agent must put the change in writing and give a copy to the ALJ and all parties.

(3) The ALJ must offer to continue (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier agency notice.

(4) If the ALJ grants a continuance, the office of administrative hearings must send a new hearing notice at least fourteen calendar days before the hearing date.

NEW SECTION

WAC 388-526-0265 May you amend your hearing request? (1) The administrative law judge (ALJ) may allow you to amend your hearing request before or during the hearing.

(2) The ALJ must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument if there is a significant change in the hearing request.

(3) If the ALJ grants a continuance, the office of administrative hearings must send a new hearing notice at least fourteen calendar days before the hearing date.

NEW SECTION

WAC 388-526-0270 Must you tell the health care authority hearing representative and the office of administrative hearings when your mailing address changes?

(1) You must tell the health care authority (HCA) hearing representative and the office of administrative hearings (OAH), as soon as possible, when your mailing address changes.

(2) If you do not notify the HCA hearing representative and OAH of a change in your mailing address and they continue to send notices and other important papers to your last known mailing address, the administrative law judge (ALJ) may assume that you received the documents.

NEW SECTION

WAC 388-526-0275 What is a continuance? A continuance is a change in the date or time of a prehearing conference, hearing or the deadline for other action.

NEW SECTION

WAC 388-526-0280 Who may request a continuance? (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the administrative law judge (ALJ) to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance. If you are unable to contact the parties, the office of administrative hearings (OAH) or the health care authority hearing representative must assist you in contacting them.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.

(a) If the parties agree to a continuance, the ALJ must grant it unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance. The prehearing conference will be scheduled as required by WAC 388-526-0197 and 388-526-0250.

(4) If the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the new hearing date.

(5) If the ALJ denies the continuance, the ALJ will proceed with the hearing on the date the hearing is scheduled, but must still issue a written order regarding the denial of the continuance.

NEW SECTION**WAC 388-526-0285 What is an order of dismissal?**

(1) An order of dismissal is an order sent by the administrative law judge to end the hearing. The order is made because the party who requested the hearing withdrew the request, failed to appear, or refused to participate, resulting in a default.

(2) If your hearing is dismissed because you did not appear or refused to participate, the agency action stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

NEW SECTION

WAC 388-526-0290 If your hearing is dismissed, may you request another hearing? (1) If the administrative law judge (ALJ) sends an order dismissing your hearing, you may ask that the ALJ vacate (set aside) the order of dismissal.

(2) If the order of dismissal is vacated, your hearing is reinstated, which means you get another opportunity to have a hearing on your initial request for hearing.

NEW SECTION

WAC 388-526-0295 Where do you send a request to vacate an order of dismissal? You must send your request to vacate an order of dismissal to the board of appeals (BOA) or the office of administrative hearings (OAH). You should specify in your request why the order of dismissal should be vacated. BOA forwards any request received to OAH to

schedule a hearing. OAH sends you a notice of the hearing on the request to vacate the order of dismissal.

NEW SECTION

WAC 388-526-0300 What is the deadline for vacating an order of dismissal? (1) You must send your request to vacate an order of dismissal to the office of administrative hearings (OAH) or the board of appeals (BOA) within twenty-one calendar days after the date the order of dismissal was mailed to you. If no request is received within that deadline, the dismissal order becomes a final order.

(2) You may make a late request to vacate the order of dismissal for up to one year after it was mailed but you must show good cause according to WAC 388-526-0020 for the late request to be accepted and the dismissal to be vacated.

(3) If you ask to vacate more than one year after the order was mailed, the administrative law judge may vacate the order of dismissal if the health care authority hearing representative and any other party agrees to waive (excuse) the deadline.

NEW SECTION

WAC 388-526-0305 How does an administrative law judge vacate an order of dismissal? (1) If your request was received more than twenty-one days, but less than one year after the dismissal order was mailed, the administrative law judge (ALJ) first must decide if you have good cause according to WAC 388-526-0020.

(2) If your request was timely or you show good cause for missing the deadline, the ALJ will receive evidence and argument at a hearing from the parties on whether the order of dismissal should be vacated.

(3) The ALJ vacates an order of dismissal and reinstates the hearing if you show good cause or if the health care authority hearing representative agrees to waive the deadline. You will then be allowed to present your case about your original request for hearing, either at the same time or at a later date if a continuance is granted.

NEW SECTION

WAC 388-526-0310 May a party request a stay of the agency action? A party may request that an administrative law judge (ALJ) or review judge stay (stop) an agency action until there is a decision entered by the ALJ or review judge. An ALJ or review judge decides whether to grant the stay.

NEW SECTION

WAC 388-526-0315 May a party require witnesses to testify or provide documents? A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

NEW SECTION**WAC 388-526-0320 Who may prepare a subpoena?**

(1) Administrative law judges (ALJs), the health care authority hearing representative, and attorneys for the parties may prepare subpoenas. If an attorney does not represent you, you may ask the ALJ to prepare a subpoena on your behalf. The ALJ may schedule a hearing to decide whether to issue a subpoena.

(2) An ALJ may deny a request for a subpoena. For example, an ALJ may deny a request for a subpoena when the ALJ determines that a witness has no actual knowledge regarding the facts or that the documents are not relevant.

NEW SECTION**WAC 388-526-0325 How is a subpoena served? (1)**

Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 388-526-0330 May the administrative law judge quash a subpoena? (1) A party may request that an administrative law judge (ALJ) quash (set aside) or change the subpoena request at any time before the deadline given in the subpoena.

(2) An ALJ may set aside or change a subpoena if it is unreasonable.

(3) Witnesses with safety or accommodation concerns should contact the office of administrative hearings (OAH).

NEW SECTION

WAC 388-526-0335 Do you have to pay for a subpoena? There is no cost to prepare a subpoena, but you may have to pay for:

(1) Serving a subpoena;

(2) Complying with a subpoena; and

(3) Witness fees according to RCW 34.05.446(7).

NEW SECTION**WAC 388-526-0340 How is your hearing held? (1)**

Hearings may be held in person or by telephone conference.

(2) A telephone conference hearing is where all parties appear by telephone.

(3) An in-person hearing is where you appear face-to-face with the administrative law judge (ALJ) and the other parties appear either in person or by telephone.

(4) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, you may request that the ALJ convert it to a telephone hearing. Once a telephone conference hearing begins, the ALJ may stop, reschedule, and convert the hearing to an in-person hearing if any party makes such a request.

NEW SECTION**WAC 388-526-0345 Is an administrative law judge present at your hearing? (1)**

If your hearing is scheduled as an in-person hearing, an administrative law judge (ALJ) is physically or visually present.

(2) If your hearing is scheduled as a telephone conference, an ALJ is present by telephone.

NEW SECTION

WAC 388-526-0350 Is your hearing recorded? The administrative law judge must record the entire hearing using audio recording equipment (such as a digital recorder or a tape recorder).

NEW SECTION**WAC 388-526-0355 Who may attend your hearing?**

(1) All parties and their representatives may attend the hearing.

(2) Witnesses may be excluded from the hearing if the administrative law judge (ALJ) finds good cause.

(3) The ALJ may also exclude other persons from all or part of the hearing.

NEW SECTION

WAC 388-526-0360 May a party convert how a hearing is held or how a witness appears at a hearing? (1) The parties have the right to request that:

(a) A hearing format be converted (changed) from an in-person hearing to a telephone conference or from a telephone conference to an in-person hearing; or

(b) A witness appear in person or by telephone conference. The office of administrative hearings (OAH) must advise you of the right to request a change in how a witness appears.

(2) A party must show a compelling reason to change the way a witness appears (in-person or by telephone conference). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the administrative law judge (ALJ) to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects their ability to present their case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(3) A compelling reason to convert the way a witness appears at a hearing can be overcome by a compelling reason not to convert how a witness appears for a hearing.

NEW SECTION

WAC 388-526-0365 How does a party convert how a hearing is held or how the witnesses or parties appear? (1) If a party wants to convert the hearing or change how their witnesses or other parties appear, the party must contact the office of administrative hearings (OAH) to request the change.

(2) The administrative law judge (ALJ) may schedule a prehearing conference to determine if the request should be granted.

(3) If the ALJ grants the request, the ALJ reschedules the hearing or changes how the witness or party appears.

(4) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

NEW SECTION

WAC 388-526-0370 How are documents submitted for a telephone conference? (1) When a hearing is conducted by telephone, an administrative law judge (ALJ) may order the parties to provide the hearing documents at least five days before the hearing, so all parties have an opportunity to view them during the hearing.

(2) The health care authority hearing representative may be able to help you copy and send your documents to the ALJ and any other parties.

NEW SECTION

WAC 388-526-0375 What happens at your hearing? At your hearing:

- (1) The administrative law judge (ALJ):
 - (a) Explains your rights;
 - (b) Marks and admits or rejects exhibits;
 - (c) Ensures that a record is made;
 - (d) Explains that a decision is mailed after the hearing;
 - (e) Notifies the parties of appeal rights;
 - (f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and
 - (g) May take actions as authorized according to WAC 388-526-0215.
- (2) The parties may:
 - (a) Make opening statements to explain the issues;
 - (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
 - (c) Question the witnesses presented by the other parties; and
 - (d) Give closing arguments about what the evidence shows and what laws apply.
- (3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

WAC 388-526-0380 What is a group hearing? (1) A group hearing may be held when two or more parties request a hearing about similar issues.

(2) Hearings may be combined at the request of the parties or the administrative law judge.

(3) All parties participating in a group hearing may have their own representative.

NEW SECTION

WAC 388-526-0385 May a party withdraw from a group hearing? (1) A party may withdraw from a group hearing by asking the administrative law judge (ALJ) for a separate hearing.

(2) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.

(3) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.

NEW SECTION

WAC 388-526-0387 How may you request that a hearing be consolidated or severed when multiple agencies are parties to the proceeding? The following requirements apply only to adjudicative proceedings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency.

(1) When you file a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The administrative law judge (ALJ) may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

- (a) All parties consent to the severance; or
- (b) Either party requests severance without another party's consent, and the ALJ finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(2) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon his or her own motion, the ALJ may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(3) If the ALJ grants the motion to sever the hearing into multiple proceedings or consolidate multiple proceedings into a single proceeding, the ALJ will send out an order and a new notice of hearing to the appropriate parties in accordance with WAC 388-526-0250.

NEW SECTION

WAC 388-526-0390 What is evidence? (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the administrative law judge.

NEW SECTION

WAC 388-526-0395 When may the parties bring in evidence? (1) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may send in evidence before these events.

(2) The administrative law judge (ALJ) may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

- (a) They have good cause for missing the deadline; or
- (b) That the other parties agree.

(3) If the ALJ gives the parties more time to submit evidence, the parties may send it in after the hearing. The ALJ may allow more time for the other parties to respond to the new evidence.

NEW SECTION

WAC 388-526-0400 What evidence may the parties present during the hearing? The parties may bring any documents and witnesses to the hearing to support their position. However, the following provisions apply:

(1) The other parties may object to the evidence and question the witnesses;

(2) The administrative law judge (ALJ) determines whether the evidence is admitted and what weight (importance) to give it;

(3) If the ALJ does not admit the evidence the parties may make an offer of proof to show why the ALJ should admit it;

(4) To make an offer of proof a party presents evidence and argument on the record to show why the ALJ should consider the evidence; and

(5) The offer of proof preserves the argument for appeal.

NEW SECTION

WAC 388-526-0405 What is a stipulation? (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

(2) If an administrative law judge (ALJ) accepts a stipulation, the ALJ must enter it into the record.

(3) A stipulation may be made before or during the hearing.

NEW SECTION

WAC 388-526-0410 After the parties agree to a stipulation, may they change or reject it? (1) A party may change or reject a stipulation after it has been made.

(2) To change or reject a stipulation, a party must show the administrative law judge that:

(a) The party did not intend to make the stipulation or was mistaken when making it; and

(b) Changing or rejecting the stipulation does not harm the other parties.

NEW SECTION

WAC 388-526-0415 What are proposed exhibits? Proposed exhibits are documents or other objects that a party wants the administrative law judge (ALJ) to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

NEW SECTION

WAC 388-526-0420 Do the parties mark and number their proposed exhibits? (1) The health care authority (HCA) hearing representatives must mark and number their proposed exhibits and provide copies to the other parties as far ahead of the hearing as possible.

(2) The administrative law judge (ALJ) may request that you mark and number your proposed exhibits before the hearing. You should bring enough copies of your proposed exhibits for all parties. If you do not bring enough copies, you must make your proposed exhibits available for copying.

(3) If you cannot afford to pay for copies of proposed exhibits, either the HCA hearing representative or the office of administrative hearings must make the copies for you.

(4) The ALJ may require proof that you are unable to pay.

NEW SECTION

WAC 388-526-0425 Who decides whether to admit proposed exhibits into the record? (1) The administrative law judge (ALJ) decides whether or not to admit a proposed exhibit into the record and also determines the weight (importance) of the evidence.

(2) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(3) The ALJ may also exclude proposed exhibits from the record.

(4) The ALJ must make rulings on the record to admit or exclude exhibits.

NEW SECTION

WAC 388-526-0430 What may a party do if they disagree with an exhibit? (1) A party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.

(2) Even if a party agrees that a proposed exhibit is a true and authentic copy of a document, the agreement does not mean that a party agrees with:

- (a) Everything in the exhibit or agrees that it should apply to the hearing;
- (b) What the exhibit says; or
- (c) How the administrative law judge should use the exhibit to make a decision.

NEW SECTION

WAC 388-526-0435 When should an administrative law judge receive proposed exhibits for a telephone hearing? (1) Parties should send their proposed exhibits to the administrative law judge (ALJ) and the other parties at least five days before the telephone hearing. In some cases, the ALJ may require that the parties send them earlier.

(2) Sending the proposed exhibits to the ALJ before the telephone hearing allows all parties to use them during the hearing.

(3) For a telephone hearing, the health care authority hearing representative may help you send copies of your proposed exhibits to the ALJ and the other parties if you cannot afford to do so.

NEW SECTION

WAC 388-526-0440 What is judicial notice? (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations.

(2) For example, an administrative law judge may take judicial notice of a calendar, a building code or a standard or practice.

NEW SECTION

WAC 388-526-0445 How does the administrative law judge respond to requests to take judicial notice? (1) The administrative law judge (ALJ) may consider and admit evidence by taking judicial notice.

(2) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(3) If judicial notice has been requested, or if the ALJ intends to take judicial notice, the ALJ must tell the parties before or during the hearing.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 388-526-0450 What is a witness? (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

NEW SECTION

WAC 388-526-0455 Who may be a witness? (1) A witness may be:

- (a) You or the health care authority (HCA) hearing representative; or
 - (b) Anyone you, the administrative law judge (ALJ), or the HCA hearing representative asks to be a witness.
- (2) The ALJ decides who may testify as a witness.

(3) An expert witness may not be a former HCA employee, a former HCA authorized agent, or a former employee of the department in the proceeding against HCA or the department if that employee was actively involved in the agency action while working for HCA or the department, unless the HCA hearing representative agrees.

NEW SECTION

WAC 388-526-0460 How do witnesses testify? All witnesses:

- (1) Must affirm or take an oath to testify truthfully during the hearing.
- (2) May testify in person or by telephone.
- (3) May request interpreters from OAH at no cost to you.
- (4) May be subpoenaed and ordered to appear according to WAC 388-526-0315.

NEW SECTION

WAC 388-526-0465 May the parties cross-examine a witness? (1) The parties have the right to cross-examine (question) each witness.

(2) If a party has a representative, only the representative, and not the party, may question the witness.

(3) The administrative law judge may also question witnesses.

NEW SECTION

WAC 388-526-0470 May witnesses refuse to answer questions? Witnesses may refuse to answer questions. However, if a witness refuses to answer, the administrative law judge may reject all of the related testimony of that witness.

NEW SECTION

WAC 388-526-0475 What evidence does an administrative law judge consider? (1) The administrative law judge (ALJ) may only consider admitted evidence to decide the case.

(2) Admission of evidence is based upon the reasonable person standard. This standard means evidence that a reasonable person would rely on in making a decision.

(3) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

- (4) The ALJ may reject evidence, if it:
 - (a) Is not relevant;
 - (b) Repeats evidence already admitted; or

- (c) Is from a privileged communication protected by law.
- (5) The ALJ must reject evidence if required by law.
- (6) The ALJ decides:

- (a) What evidence is more credible if evidence conflicts; and
- (b) The weight given to the evidence.

NEW SECTION

WAC 388-526-0480 What does burden of proof mean? (1) Burden of proof is a party's responsibility to:

- (a) Provide evidence regarding disputed facts; and
- (b) Persuade the administrative law judge (ALJ) that a position is correct.

(2) To persuade the ALJ, the party who has the burden of proof must provide the amount of evidence required by WAC 388-526-0485.

NEW SECTION

WAC 388-526-0485 What is the standard of proof? Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

NEW SECTION

WAC 388-526-0490 How is a position proven at hearing? The administrative law judge (ALJ) decides if a party has met the burden of proof. The ALJ writes a decision based on the evidence presented during the hearing and consistent with the law.

NEW SECTION

WAC 388-526-0495 What is equitable estoppel? (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent the agency from taking some action against you, such as collecting an overpayment. Equitable estoppel may not be used to require the agency to continue to provide something, such as benefits, or to require the agency to take action contrary to a statute.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. You must prove all of the following:

(a) The agency made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by the agency. For example, the agency or one of its authorized agents gave you money based on your application, then later tells you that you received an overpayment and wants you to pay the money back based on the same information.

(b) You reasonably relied on the agency's original statement, action or failure to act. For example, you believed the agency acted correctly when you received money.

(c) You will be injured to your detriment if the agency is allowed to contradict the original statement, action or failure to act. For example, you did not seek nongovernmental assis-

tance because you were receiving benefits from the agency, and you would have been eligible for these other benefits.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

- (i) You cannot afford to repay the money to the agency;
- (ii) You gave the agency timely and accurate information when required;
- (iii) You did not know that the agency made a mistake;
- (iv) You are free from fault; and
- (v) The overpayment was caused solely by an agency mistake.

(e) The exercise of government functions is not impaired. For example, the use of equitable estoppel in your case will not result in circumstances that will impair agency functions.

(3) If the ALJ concludes that you have proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, the agency is stopped or prevented from taking action or enforcing a claim against you.

NEW SECTION

WAC 388-526-0500 What may an administrative law judge do before the record is closed? Before the record is closed, the administrative law judge may:

- (1) Set another hearing date;
- (2) Enter orders to address limited issues if needed before writing and mailing a hearing decision to resolve all issues in the proceeding; or
- (3) Give the parties more time to send in exhibits or written argument.

NEW SECTION

WAC 388-526-0505 When is the record closed? The record is closed:

- (1) At the end of the hearing if the administrative law judge does not allow more time to send in evidence or argument; or
- (2) After the deadline for sending in evidence or argument is over.

NEW SECTION

WAC 388-526-0510 What happens when the record is closed? No more evidence may be taken without good cause after the record is closed.

NEW SECTION

WAC 388-526-0512 What is included in the hearing record? (1) The administrative law judge must produce a complete official record of the proceedings.

- (2) The official record must include, if applicable:
 - (a) Notice of all proceedings;
 - (b) Any prehearing order;
 - (c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;

- (d) Evidence received or considered;
- (e) A statement of matters officially noticed;
- (f) Offers of proof, objections, and any resulting rulings;
- (g) Proposed findings, requested orders and exceptions;
- (h) A complete audio recording of the entire hearing, together with any transcript of the hearing;
- (i) Any final order, initial order, or order on reconsideration; and
- (j) Matters placed on the record after an ex parte communication.

NEW SECTION

WAC 388-526-0515 What happens after the record is closed? (1) After the record is closed, the administrative law judge (ALJ) must enter an initial or final order and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed, but many programs have earlier deadlines. Specific program rules may set the deadlines.

(3) The office of administrative hearings must send the official record of the proceedings to the board of appeals. The record must be complete when it is sent, and include all parts required by WAC 388-526-0512.

NEW SECTION

WAC 388-526-0520 What information must the administrative law judge include in the decision? The administrative law judge (ALJ) must include the following information in the decision:

- (1) Identify the hearing decision as a health care authority case;
- (2) List the name and docket number of the case and the names of all parties and representatives;
- (3) Find the facts used to resolve the dispute based on the hearing record;
- (4) Explain why evidence is credible when the facts or conduct of a witness is in question;
- (5) State the law that applies to the dispute;
- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result and remedy ordered;
- (9) Explain how to request changes in the decision and the deadlines for requesting them;
- (10) State the date the decision becomes final according to WAC 388-526-0525; and
- (11) Include any other information required by law or program rules.

NEW SECTION

WAC 388-526-0525 When do initial orders become final? If no one requests review of the initial order or if a review request is dismissed, the initial order is final twenty-one calendar days after it is mailed.

NEW SECTION

WAC 388-526-0530 What if a party disagrees with the administrative law judge's decision? (1) If a party disagrees with an administrative law judge's (ALJ) initial or final order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 388-526-0540 through 388-526-0555.

(2) If a party disagrees with an initial order and wants it changed, the party must request review by a review judge as provided in WAC 388-526-0560 through 388-526-0595.

If a party wants to stay the agency action until review of the initial order is completed, the party must request a stay from a review judge.

(3) Final orders entered by ALJs may not be reviewed by a review judge.

(4) If a party disagrees with an ALJ's final order, the party may request reconsideration as provided in WAC 388-526-0605 through 388-526-0635. You may also petition for judicial review of the final order as stated in WAC 388-526-0640 through 388-526-0650. You do not need to file a request for reconsideration of the final order before petitioning for judicial review. The health care authority may not request judicial review of an ALJ's or review judge's final order.

NEW SECTION

WAC 388-526-0540 How are clerical errors in the administrative law judge's decision corrected? (1) A clerical error is a mistake that does not change the intent of the decision.

(2) The administrative law judge corrects clerical errors in hearing decisions by issuing a second decision referred to as a corrected decision or corrected order. Corrections may be made to initial orders and final orders.

(3) Some examples of clerical error are:

- (a) Missing or incorrect words or numbers;
- (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or
- (c) Math errors when adding the total of an overpayment.

NEW SECTION

WAC 388-526-0545 How does a party ask for a corrected administrative law judge decision? (1) A party may ask for a corrected administrative law judge (ALJ) decision by calling or writing the office of administrative hearings office that held the hearing.

(2) When asking for a corrected decision, please identify the clerical error you found.

NEW SECTION

WAC 388-526-0550 How much time do the parties have to ask for a corrected administrative law judge decision? (1) The parties must ask the administrative law judge (ALJ) for a corrected decision on or before the tenth calendar day after the order was mailed.

(2) If you ask the ALJ to correct a decision, the time period provided by this section for requesting a corrected decision of an initial order, and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline, if any, for a review judge to enter a final order.

NEW SECTION

WAC 388-526-0555 What happens when a party requests a corrected administrative law judge decision?

(1) When a party requests a corrected initial or final order, the administrative law judge (ALJ) must either:

- (a) Send all parties a corrected order; or
- (b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(3) If the ALJ denies a request for a corrected initial order and the party still wants the hearing decision changed, the party must request review by a review judge.

(4) Requesting an ALJ to correct the initial order does not automatically extend the deadline to request review of the initial order by a review judge. When a party needs more time to request review of an initial order, the party must ask for more time to request review as permitted by WAC 388-526-0580(2).

(5) If the ALJ denies a request for a corrected final order and you still want the hearing decision changed, you must request judicial review.

NEW SECTION

WAC 388-526-0560 What is review of an initial order by a review judge? (1) Review by a review judge is available to a party who disagrees with the administrative law judge's (ALJ) initial order.

(2) If a party wants the initial order changed, the party must request that a review judge review the initial order.

(3) If a request is made for a review judge to review an initial order, it does not mean there is another hearing conducted by a review judge.

(4) The review judge considers the request, the initial order, and the record, and may hear oral argument, before deciding if the initial order should be changed.

(5) Review judges may not review ALJ final orders.

NEW SECTION

WAC 388-526-0565 What evidence does the review judge consider in reviewing an initial order? (1) The review judge, in most cases, only considers evidence given at the original hearing before the administrative law judge.

(2) The review judge may allow the parties to make oral argument when reviewing initial orders.

NEW SECTION

WAC 388-526-0570 Who may request review of an initial order? (1) Any party may request a review judge to review the initial order.

(2) If more than one party requests review, each request must meet the deadlines in WAC 388-526-0580.

NEW SECTION

WAC 388-526-0575 What must a party include in the review request? A party must make the review request in writing and send it to the board of appeals. The party should identify the:

- (1) Parts of the initial order with which the party disagrees; and
- (2) Evidence supporting the party's position.

NEW SECTION

WAC 388-526-0580 What is the deadline for requesting review by a review judge? (1) The board of appeals (BOA) must receive the written review request on or before 5:00 p.m. on the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) If you ask a review judge to review an administrative law judge decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

NEW SECTION

WAC 388-526-0585 Where does a party send the request for review by a review judge? (1) A party must send the request for review of the initial order to the board of appeals (BOA) at the address given in WAC 388-526-0030. A party should also send a copy of the review request to the other parties.

(2) After receiving a party's review request, BOA sends a copy to the other parties, their representatives, and the office of administrative hearings. The other parties and their representatives may respond as described in WAC 388-526-0590.

NEW SECTION

WAC 388-526-0590 How does the party that is not requesting review respond to the review request? (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond, that party must send the response so that the board of appeals (BOA) receives it on or

before the seventh business day after the date the other party's review request was mailed to the party by the BOA.

(3) The party should send a copy of the response to all other parties or their representatives.

(4) A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If you ask for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order. A review judge may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 388-526-0595 What happens after the review response deadline? (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to review the initial order after the record is closed. To find out which judge is assigned, call the board of appeals.

(3) After the record is closed, the assigned review judge:

(a) Reviews the initial order; and

(b) Enters a final order that affirms, changes, dismisses or reverses the initial order; or

(c) Returns the case to the office of administrative hearings for further action.

NEW SECTION

WAC 388-526-0600 What is the authority of the review judge? (1) Review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the administrative law judge (ALJ). The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may return (remand) cases to the office of administrative hearings for further action.

(3) In cases where there is a consolidated hearing pursuant to WAC 388-526-0387, any party may request review of the initial order in accordance with the requirements contained in this chapter.

(4) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-526-0218.

NEW SECTION

WAC 388-526-0605 What if a party does not agree with a final order entered by the office of administrative hearings or the board of appeals? (1) If a party does not agree with the final order and wants it reconsidered, the party must:

(a) Ask the administrative law judge (ALJ) to reconsider the decision, if the final order was entered by an ALJ; or

(b) Ask the review judge to reconsider the decision, if the final order was entered by a review judge.

(2) The final order or the reconsideration decision is the final agency decision. If you disagree with that decision, you must petition for judicial review to change it.

(3) You may ask the court to stay or stop the agency action after filing the petition for judicial review.

NEW SECTION

WAC 388-526-0610 What is reconsideration? (1) Reconsideration is:

(a) Asking an administrative law judge (ALJ) to reconsider a final order entered by the ALJ because the party believes the ALJ made a mistake; or

(b) Asking a review judge to reconsider a final order entered by a review judge because the party believes the review judge made a mistake.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before you request judicial review. However, you do not need to request reconsideration of a final order before you request judicial review.

NEW SECTION

WAC 388-526-0615 What must a party include in the reconsideration request? The party must make the request in writing and clearly state why the party wants the final order reconsidered.

NEW SECTION

WAC 388-526-0620 What is the deadline for requesting reconsideration? (1) If the office of administrative hearings (OAH) entered the final order, OAH must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(2) If the board of appeals (BOA) entered the final order, BOA must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(3) If a reconsideration request is received after the deadline, the final order will not be reconsidered and the deadline to ask for superior court review continues to run.

(4) OAH or BOA may extend its deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for the extension.

(5) If a party does not request reconsideration or ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final agency decision.

NEW SECTION

WAC 388-526-0625 Where does a party send a reconsideration request? (1) A party must send a written reconsideration request to the office of administrative hearings (OAH) if OAH entered the final order, or to the board of appeals (BOA) if BOA entered the final order.

(2) After receiving a reconsideration request, OAH or BOA sends a copy to the other parties and representatives and gives them time to respond.

NEW SECTION

WAC 388-526-0630 How does a party respond to a reconsideration request? (1) A party does not have to respond to a request. A response is optional.

(2) If a party responds, that party must send a response to the office of administrative hearings (OAH) if OAH entered the final order, or to the board of appeals (BOA) if BOA entered the final order, by or before the seventh business day after the date OAH or BOA mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or BOA may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

NEW SECTION

WAC 388-526-0635 What happens after a party requests reconsideration? (1) After the office of administrative hearings (OAH) or the board of appeals (BOA) receives a reconsideration request, an administrative law judge (ALJ) or review judge has twenty calendar days to send a reconsideration decision unless OAH or BOA sends notice allowing more time.

(2) After OAH or BOA receives a reconsideration request, the ALJ or review judge must either:

- (a) Write a reconsideration decision; or
- (b) Send all parties an order denying the request.

(3) If the ALJ or review judge does not send an order or notice granting more time within twenty days of receipt of the reconsideration request, the request is denied.

NEW SECTION

WAC 388-526-0640 What is judicial review? (1) Judicial review is the process of appealing a final order to a court.

(2) You may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. HCA may not request judicial review.

(3) You must consult RCW 34.05.510 to 34.05.598 for further details of the judicial review process.

NEW SECTION

WAC 388-526-0645 When must you ask for judicial review? (1) You must file your petition for judicial review with the superior court within thirty calendar days after the office of administrative hearings or the board of appeals mails its final order.

(2) Generally, you may file a petition for judicial review only after you have completed the administrative hearing process. However, you do not need to file a request for reconsideration of a final order before requesting judicial review.

NEW SECTION

WAC 388-526-0650 How do you serve your petition for judicial review? (1) You must file and serve the petition for judicial review of a final order within thirty days after the

date it was mailed. You must file your petition for judicial review with the court. You must serve copies of your petition on health care authority (HCA), the office of the attorney general, and all other parties.

(2) To serve HCA, you must deliver a copy of the petition to the director of HCA or to the board of appeals (BOA). You may hand deliver the petition or send it by mail that gives proof of receipt. The physical location of the director is:

Director
Health Care Authority
626 8th Avenue SE
Olympia, WA 98501

The mailing address of the director is:

Director
Health Care Authority
P.O. Box 45502
Olympia, WA 98504-5502

The physical and mailing addresses for BOA are in WAC 388-526-0030.

(3) To serve the office of the attorney general and other parties, you may send a copy of the petition for judicial review by regular mail. You may send a petition to the address for the attorney of record to serve a party. You may serve the office of the attorney general by hand delivery to:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, Washington 98501

The mailing address of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-526-2610 Prehearing reviews for clients who request a fair hearing.

WSR 11-16-006**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed July 21, 2011, 2:56 p.m., effective July 30, 2011]

Effective Date of Rule: July 30, 2011.

Purpose: The DSHS division of child support (DCS) is adopting these second emergency rules to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations. The federal rules being implemented in this rule-making order are 45

C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

DCS filed emergency rules with an effective date of March 31, 2011, under WSR 11-08-020; under RCW 34.05.350(2), those rules expire one hundred twenty days after filing, on July 29, 2011. The public rule-making hearing on these rules is set for August 9, 2011, under WSR 11-13-108. DCS is filing the second emergency rule package in order to keep the rules in effect until after the CR-103P Rule-making order, is filed and the thirty day period required under RCW 34.08.380(2) has run. The rules adopted in this second emergency filing are identical to the first emergency rules.

Citation of Existing Rules Affected by this Order: New sections WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? and 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country?; and amending WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS ~~((deny))~~ keep a support enforcement case open despite a request to close ((a support enforcement case)) it?, 388-14A-2090 Who ~~((is mailed))~~ receives notice ~~((of DCS' intent to close))~~ when DCS closes a case?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2160 ~~((If my information is confidential, can))~~ On what authority does DCS ((report me to)) share my confidential information with a credit bureau?, 388-14A-3130 What happens if a ~~((parent))~~ party makes a timely request for hearing on a support establishment notice?, 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-7100 The division of child support may register an order from another state for enforcement or modification, 388-14A-7305 How ~~((do I))~~ does a party, IV-D agency or jurisdiction ask ((DCS to do)) for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties ~~((of its))~~ that a determination of the controlling order ~~((has been))~~ is going to be made?, and 388-14A-7335 What happens if someone objects to ~~((DCS' proposed))~~ a notice of support debt and registration which contains a determination of the presumed controlling order?

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310.

Other Authority: 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline

for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 13, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 13, Repealed 0.

Date Adopted: July 18, 2011.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-17 issue of the Register.

WSR 11-16-007
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 21, 2011, 2:57 p.m., effective July 22, 2011]

Effective Date of Rule: July 22, 2011.

Purpose: The DSHS division of child support (DCS) is filing the following CR-103E for an emergency rule amending various sections in chapter 388-14A WAC to implement E2SHB 1267 (chapter 283, Laws of 2011), which makes changes to the Uniform Parentage Act, contained in chapter 26.26 RCW. E2SHB 1267's effective date is July 22, 2011, and DCS must adopt emergency rules in order to have rules effective by that date.

DCS cannot start the rule-making process until the legislation we are implementing takes effect. Therefore, we are filing this emergency rule to adopt rules as of the effective date, July 22, 2011. At the same time, we are filing a CR-101 Preproposal statement of inquiry, to start the regular rule-making process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-3100, 388-14A-3102, and 388-14A-3115.

Statutory Authority for Adoption: E2SHB 1267 (chapter 283, Laws of 2011), RCW 34.05.220, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, and 74.20A.310.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline

for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These rules are adopted to implement E2SHB 1267 (chapter 283, Laws of 2011), which makes changes to the Uniform Parentage Act, contained in chapter 26.26 RCW. E2SHB 1267's effective date is July 22, 2011, and DCS must adopt emergency rules in order to have rules effective by that date.

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 4, 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 4, Repealed 0.

Date Adopted: July 19, 2011.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-17 issue of the Register.

WSR 11-16-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-162—Filed July 22, 2011, 9:26 a.m., effective July 22, 2011, 9:26 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100L; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. 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 22, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100M Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 on Monday and Tuesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 seven days per week.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-52-07100L Sea cucumbers. (11-155)

WSR 11-16-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-163—Filed July 22, 2011, 2:26 p.m., effective July 25, 2011, 6:00 a.m.]

Effective Date of Rule: July 25, 2011, 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 220-32-05100D; and amending WAC 220-32-051.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939,

603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the final weekly gillnet fishing period for the 2011 summer season. Continues to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Summer chinook and steelhead remain available for harvest based on harvest guidelines and management agreements. Sockeye sales remain prohibited. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 10 and July 21, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 22, 2011.

Philip Anderson
Director

NEW SECTION

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

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: 6:00 AM July 25 through 6:00 PM July 30, 2011.
 - b. Gear: Gill nets only. Minimum mesh size is 7.25 inches (stretched).
 - c. Allowable Sales: Chinook, coho, steelhead, shad, yellow perch, bass, carp and catfish. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sockeye sales are not allowed, but sockeye may be retained for subsistence purposes.
 - d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary.
2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: Immediately until further notice.
 - b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
 - c. Allowable sale: Chinook, coho, steelhead, shad, yellow perch, bass, carp and catfish. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sockeye sales are not allowed, but sockeye may be retained for subsistence purposes.
 - d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary.
3. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in

the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately until further notice.

c. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sockeye sales are not allowed, but sockeye may be retained for subsistence purposes. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Open Area: Columbia River Tributaries above Bonneville Dam:

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

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat 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.

d. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sockeye may not be sold, but they may be retained for subsistence purposes. Sturgeon may not be sold.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 25, 2011:

WAC 220-32-05100D	Columbia River salmon seasons above Bonneville Dam. (11-154)
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WSR 11-16-013 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-164—Filed July 22, 2011, 2:27 p.m., effective July 22, 2:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Q; 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: Clarifies the upstream boundary for the sturgeon spawning sanctuary closure below Bonneville Dam. The closure date for retention of sturgeon in The Dalles Pool was adopted because Washington and Oregon fish managers estimate that the harvest guideline of three hundred fish will be reached on July 29, 2011. 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 22, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D 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 John Day Dam upstream to McNary Dam.

(2) Effective immediately until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries, except that a person may retain white sturgeon through July 31,

2011. Minimum size when open to retain white sturgeon in this area is 41 inches in fork length through July 31, 2011.

(3) 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 The Dalles Dam.

(4) Effective immediately through August 31, 2011, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River from Bonneville Dam downstream to 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.

(5) Effective July 30, 2011, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from The Dalles Dam upstream to John Day Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900Q Exceptions to statewide rules—Columbia River sturgeon. (11-148)

**WSR 11-16-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-166—Filed July 26, 2011, 10:44 a.m., effective August 5, 2011]

Effective Date of Rule: August 5, 2011.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There is sufficient halibut quota to allow for the opening of Marine Area 1. This rule conforms to action taken by the Pacific Fishery Management Council and the International Halibut Commission and federal rules adopted by the National Marine Fishery Service. 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 26, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500I Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective August 5, 2011, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open August 5, 2011, until further notice, Fridays through Sundays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2**

(i) Primary season - Closed.

(ii) Northern Nearshore fishery - Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates: open seven days per week until further notice.

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

46° 58.00 N. lat, 124° 24.24 W. long

(3) **Catch Record Card Areas 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13** - Closed.

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

(5) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500H Halibut—Seasons—Daily and possession limits. (11-134)

WSR 11-16-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-172—Filed July 27, 2011, 2:24 p.m., effective August 1, 2011]

Effective Date of Rule: August 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900G; 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: Hatchery summer chinook returns to the Wenatchee River are predicted to be in excess of spawning escapement needs. The population is not listed under the Endangered Species Act. The majority of spring chinook and bull trout will have migrated to the upper Wenatchee River, and few steelhead will remain in the mainstem. 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 27, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900G Exceptions to statewide rules—Wenatchee River. 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) Effective August 1 through October 15, 2011, it is permissible to fish for salmon in waters of the Wenatchee River from the mouth to 400 feet below Dryden Dam; daily limit of two hatchery Chinook. Selective gear rules and night closure in effect. All Chinook with a floy (anchor) tag attached and/or caudal punch must be released.

(2) Effective September 1 through October 15, 2011, it is permissible to fish for salmon in waters of the Wenatchee River from the confluence of Peshastin Creek at a line perpendicular to the river at a marker on the opposite shore, to the Icicle Creek road bridge on the west end of Leavenworth. Daily limit of two hatchery Chinook. Selective gear rules and night closure in effect. All Chinook with a floy (anchor) tag attached and/or caudal punch must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2011:

WAC 232-28-61900G Exceptions to statewide rules—Wenatchee River.

WSR 11-16-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-168—Filed July 27, 2011, 2:45 p.m., effective August 1, 2011]

Effective Date of Rule: August 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900H; 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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed upon with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-upon management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: July 27, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Columbia River. 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. **Cowlitz River from Mill Creek to Barrier Dam (Cowlitz/Lewis Co.):** Effective immediately until further notice, when the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

2. **Cowlitz River from boundary markers at mouth to Mayfield Dam (Cowlitz/Lewis counties):** Effective August 1, 2011, until further notice, the salmon daily limit is 6 fish, of which no more than 2 adult Chinook may be retained. Only hatchery Chinook and hatchery coho may be retained.

3. **Cowlitz River from posted PUD sign on Peters Road to mouth of Ohanapecosh River and mouth of Muddy Fork (Lewis Co.):** Anti-snagging rule and night closure in effect September 1 through October 31, 2011, for all species. When anti-snagging rule is in effect, only fish hooked in the mouth may be retained.

4. **Delemeter Creek (Cowlitz Co.):** Effective immediately until further notice, closed 400' below to 200' above when temporary weirs are installed.

5. **Grays River from mouth to South Fork (Wahkiakum Co.):** Effective immediately, closed waters from 400' above to 200' above the temporary weir while the weir is installed in the river.

6. **Kalama River from boundary markers at mouth to railroad bridge below I-5 (Cowlitz Co.):** Effective immediately until further notice, night closure, anti snagging, and stationary gear rules are rescinded.

7. **Lewis River from mouth to forks (Clark Co.):** Effective October 1, 2011, until further notice, daily limit 6 salmon, of which no more than 2 may be adult Chinook. Release all salmon except Chinook and hatchery coho.

8. **Lewis River, North Fork from mouth to Colvin Creek (Clark/Cowlitz counties):** Effective immediately until further notice, anglers may fish from any floating device from Johnson Creek to Colvin Creek.

9. **Lewis River, North Fork from mouth to Colvin Creek (Clark/Cowlitz counties):** Effective October 1, 2011, until further notice, daily limit 6 salmon, of which no more than 2 adult Chinook may be retained. Release all salmon except Chinook and hatchery coho.

10. **Olequa Creek (Cowlitz Co.):** Effective immediately until further notice, closed 400' below to 200' above when temporary weirs are installed.

11. **Salmon Creek (Lewis Co.):** Effective immediately until further notice, closed 400' below to 200' above when temporary weirs are installed.

12. **Tilton River from mouth to west fork (Lewis Co.):** Night closure and anti-snagging rules in effect September 1

through October 31, 2011. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

13. **Washougal River from mouth to Salmon Falls Bridge (Clark Co.):** Effective immediately until further notice, closed 400' below to 200' above when temporary weirs are installed.

14. **White Salmon River from mouth to Hwy. 14 Bridge (Klickitat/Skamania Co.):** Effective immediately until further notice, the daily limit follows the most liberal regulations of the adjacent mainstem Columbia or White Salmon Rivers when both areas are open concurrently for salmon.

15. **Wind River from mouth to Hwy. 14 Bridge (Skamania Co.):** Effective immediately until further notice, the daily limit follows the most liberal regulations of the adjacent mainstem Columbia or Wind Rivers when both areas are open concurrently for 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 August 1, 2011:

WAC 232-28-61900H Exceptions to statewide rules. (11-87)

**WSR 11-16-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-169—Filed July 27, 2011, 3:26 p.m., effective July 27, 2011, 3:26 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23500X and 220-56-23500Y; and amending WAC 220-56-235.

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 purpose of this proposal is to align state regulations with federal regulations. The change reduces the state's recreational bottomfish aggregate daily limit from 15 to 12 in Marine Areas 1, 2, 3, and 4. This emergency rule is interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 27, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-23500Y Possession limits—Bottomfish.

Notwithstanding the provisions of WAC 220-56-235, effective immediately through August 6, 2011, it is unlawful for any person to take in any day more than the following quantities of bottomfish in waters of Marine Areas 1, 2, 3 and 4:

(1) 12 bottomfish species per day. The 12 fish in the aggregate limit of all species and species groups of bottomfish may include no more than 2 cabezon per person per day in addition to current daily sub limits for rockfish (10) and lingcod (2).

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-56-23500X Possession limits—Bottomfish. (11-52)

The following section of the Washington Administrative Code is repealed effective August 7, 2011:

WAC 220-56-23500Y Possession limits—Bottomfish.

WSR 11-16-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-160—Filed July 28, 2011, 2:26 p.m., effective August 1, 2011]

Effective Date of Rule: August 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900G and 232-28-62100K; and amending WAC 232-28-619 and 232-28-621.

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-upon management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: July 28, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Y Washington food fish and game fish—Freshwater exceptions to statewide rules.

Notwithstanding the provisions of WAC 232-28-619, effective August 1, 2011, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect. An area is open when a daily limit is provided:

1) **Beaver Creek (Thurston County) and all tributaries west of I-5:** Open immediately until further notice. Selective gear rules, night closure, and anti-snagging rules are in effect. Trout: Minimum length 14 inches.

2) **Black River (Thurston County) from Highway 12 to bridge on 128th Ave SW:** Night closure and anti-snagging rules are in effect. Single-point hooks required. Salmon: Open October 1 until further notice. Daily limit, 6 fish, of which only 2 may be adults. Release Chinook and chum.

3) **Canon River (Pacific County):** Unlawful to fish from a floating device equipped with an internal combustion motor; and selective gear rules apply.

4) **Chehalis River (Grays Harbor County), from Porter Bridge to high bridge on Weyerhaeuser 1000 line:** Salmon: Open October 16 until further notice. Daily limit, 6 fish, of which no more than 2 may be adult salmon. Release Chinook and chum.

5) **Cloquallum Creek (Grays Harbor County), from the mouth to the outlet of Stump Lake:** Open immediately until further notice. Trout: Minimum length 14 inches.

6) **Elwha River (Clallam County):** From downstream side of bridge on Elwha River Rd. to two hundred feet downstream of the south spillway on Elwha (Aldwell Lake) Dam: Closed waters.

7) **Green (Duwamish) River (King County):**

a) From the First Avenue South Bridge to the Interstate 405 Bridge: Open August 20 until further notice, with the following restrictions: August 20 through August 31: Night closure, anti-snagging rule, bait prohibited, and only 1 single-point hook may be used. Hook must measure less than 1/2 inch from point to shank. September 1 until further notice: night closure and anti-snagging rule in effect. Salmon: Open August 20 until further notice. Daily limit, 6 salmon, no more than 3 of which may be any combination of adult coho and adult chum. Release Chinook.

b) From the Interstate 405 Bridge to South 277th Street Bridge in Auburn: September 1 until further notice: anti-snagging rule in effect.

c) From the 277th Street Bridge to Auburn-Black Diamond Road Bridge: September 16 until further notice: anti-snagging rule in effect.

8) **Hoh River (Jefferson County), from DNR Oxbow Campground Boat Launch to Morgan's Crossing boat launch site:** Open immediately until further notice. Trout: Minimum length 14 inches.

9) **Hoquiam River, including all forks (Grays Harbor County):** Salmon: Open October 1 until further notice from the mouth to Dekay Road Bridge (West Fork) on mainstem. Daily limit, 6 fish, of which no more than 2 may be adult salmon; and of the 2 adult salmon, only 1 may be a wild coho. Release chum and Chinook. Open October 1 until further notice on East Fork from the mouth to the mouth of Berryman Creek. Daily limit, 6 fish, of which no more than 2 may be adult salmon. Release chum, Chinook, and wild coho.

10) **Johns River (Grays Harbor County):** Mouth to Ballon Creek: Salmon: Open October 1 until further notice. Daily limit 2 fish, of which 1 may be wild coho. Release chum and Chinook.

11) **Mima Creek (Thurston County) and all tributaries west of I-5:** Open immediately until further notice. Selective gear rules, night closure and anti-snagging rules are in effect. Trout: Minimum length 14 inches.

12) **Naselle River (Pacific/Wahkiakum counties), from Highway 101 Bridge upstream including all forks:** Waters from the temporary hatchery weir downstream to Highway 4 are closed when weir is installed. From the Highway 101 Bridge to the North Fork: Night closure and anti-snagging rules. From the mouth of South Fork upstream: stationary gear restriction. Salmon: Open immediately until further notice from Highway 101 Bridge to Highway 4 Bridge, and beginning September 1 until further notice from the Highway 4 Bridge to the Crown Main Line Bridge. Daily limit, 6 fish, of which no more than 3 may be adult salmon; and of these 3 adult fish, no more than 2 may be wild adult coho. Release chum and wild Chinook.

13) **Nemah River, North Fork (Pacific County):**

a) From the Highway 101 Bridge upstream to bridge on Nemah Valley Road: Night closure, stationary gear restriction, and single-point barbless hooks required September 1 until further notice. Salmon: Open September 1 until further notice. Daily limit, 6 salmon of which only 3 may be adult salmon. Release chum, wild coho, and wild Chinook.

b) From Nemah Valley Road upstream to Nemah Hatchery: closed waters, effective immediately until further notice.

14) **Nemah River, South Fork (Pacific County):** From the mouth upstream to confluence with Middle Fork Nemah River: Night closure and single-point barbless hooks required, beginning September 1 until further notice. Salmon: Open September 1 until further notice. Daily limit, 6 salmon of which only 2 may be adult salmon. Release chum, wild coho, and wild Chinook.

15) **Newaukum River, main river and South Fork upstream to Highway 508 Bridge near Kearny Creek (Lewis County):** Salmon: Open October 16 until further notice from the mouth to Leonard Road. Daily limit 6 fish, of which no more than 2 may be adult salmon. Release chum and Chinook.

16) **Nisqually River (Pierce County), from the mouth to Military Tank Crossing Bridge:** Barbless hooks required.

17) **Nooksack River (Whatcom County), from mouth to forks:**

c) From the Lummi Indian Reservation boundary to Highway 544 Bridge at Everson. Salmon: Open immediately through August 31. Daily limit, 4 pink salmon only. Bait prohibited. Only one single-point hook may be used, and hook must measure less than 1/2" from point to shank.

d) From the Lummi Indian Reservation boundary to yellow marker at the FFA High School barn in Deming: Open September 1 until further notice. Daily limit, 2 salmon, plus 2 additional coho, except release wild Chinook from September 1 through September 30.

e) From the FFA barn to confluence of the North and South Forks: Open October 1 until further notice. Daily limit 2 salmon, plus 2 additional coho.

18) **Nooksack River, North Fork (Whatcom County): From mouth to Nooksack Falls:** Salmon: Open October 1 until further notice from mouth to Maple Creek. Daily limit, 2 salmon plus 2 additional coho.

19) **Nooksack River, South Fork (Skagit/Whatcom counties): From mouth to Skookum Creek:** Salmon: Open October 1 until further notice. Daily limit, 2 salmon, plus 2 additional coho. Release chum.

20) **North River (Grays Harbor/Pacific counties), from Salmon Creek upstream to Fall River:** Salmon: Open October 1 until further notice. Daily limit, 6 fish, of which no more than 2 may be adult salmon. Release chum and wild Chinook.

21) **Puyallup River (Pierce County):**

a) From the mouth to city of Puyallup outfall structure near junction of Freeman Road and North Levee Road. Salmon: Open August 16 until further notice, except closed August 28 and 29 and September 4, 5, 6, 11, 12, and 13.

b) From the city of Puyallup outfall structure near junction of Freeman Road and North Levee Road to the Carbon River: Game fish season is open only when salmon fishing is

open. Single-point barbless hooks, anti-snagging rule and night closure in effect from August 1 until further notice. Trout: Minimum length 14 inches. Salmon: Open immediately until further notice. Daily limit 6 fish, of which no more than 4 may be adult salmon; and of the adult salmon, no more than 2 may be any combination of Chinook, coho, and chum. Release wild adult Chinook.

c) From the Carbon River upstream: Open September 1 until further notice. Selective gear rules; and release all fish, except that up to 2 hatchery steelhead may be retained.

22) Salt Creek (Clallam County): From mouth to bridge on Highway 112: Open immediately until further notice. Selective gear rules are in effect.

23) Samish River (Whatcom County):

a) From the mouth to the I-5 Bridge: Single-point hooks required immediately until further notice. Salmon: open immediately until further notice. Daily limit 2 salmon. Release wild coho. Only fish hooked inside the mouth may be retained. Anglers must retain the first 2 salmon, if lawful to do so, and stop fishing.

b) From the I-5 Bridge to old Highway 99 Bridge: Closed waters September 1 until further notice.

24) Satsop River (Grays Harbor County):

a) From the mouth to the bridge at Schafer Park: Salmon: Open October 1 until further notice. Daily limit, 6 fish, of which no more than 2 may be adult salmon; and of the 2 adult salmon, only one may be a wild coho. Release chum and Chinook.

b) From 400 feet downstream of Bingham Creek Hatchery barrier dam, upstream to dam: Closed waters, except anglers who permanently use a wheelchair or have a designated harvester card may fish within posted markers. Open immediately until further notice. Salmon: Open October 1 until further notice. Daily limit, 6 fish, of which no more than 2 may be adult salmon; and of the 2 adult salmon, only one may be a wild coho. Release chum and Chinook.

25) Skagit River (Skagit/Whatcom counties):

a) From the mouth to Gilligan Creek: Anti-snagging rule in effect immediately until further notice. Salmon: open immediately until further notice. Daily limit, 3 salmon, plus 1 additional pink. Release Chinook and chum.

b) From Gilligan Creek to the Dalles Bridge at Concrete: Salmon: Open August 16 until further notice. Daily limit, 3 salmon, plus 1 additional pink. Release Chinook and chum.

c) From the Dalles Bridge at Concrete to the Cascade River Road: Open immediately until further notice season. Anti-snagging rule and night closure. Trout except Dolly Varden/Bull Trout: Minimum length 14 inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit; minimum length 20 inches. Salmon: Open September 16 until further notice. Daily limit, 3 salmon, plus 1 additional pink. Release Chinook and chum.

d) From Cascade River Road to Gorge Powerhouse: Open immediately until further notice. Unlawful to fish from a floating device equipped with an internal combustion motor; and selective gear rules apply. All species: Release all fish, except that up to 2 hatchery steelhead may be retained per day.

26) Skokomish River (Mason County), From Highway 106 Bridge to Highway 101 Bridge: Salmon: Open immedi-

ately until further notice, except closed August 1, 8, 9, 15, 16, 22, 23, 29, and 30, and September 6.

27) Skookumchuck River (Thurston County): From the mouth to one hundred feet below the outlet of the Trans Alta steelhead rearing pond located at the base of the Skookumchuck Dam: Salmon: Open October 16 until further notice. Daily limit, 6 fish, of which no more than 2 may be adult salmon; and of the adult salmon, only 1 may be wild adult coho. Release chum and Chinook.

28) Skykomish River (Snohomish County): From the mouth to the forks: Salmon: Open August 16 until further notice from the mouth to Lewis Street Bridge in Monroe; and open September 1 until further notice from the Lewis Street Bridge to the forks. Daily limit, 3 salmon, plus 1 additional pink. Release Chinook and chum.

29) Smith Creek (near North River) (Pacific County): Salmon: Open September 1 until further notice from the mouth to the Highway 101 Bridge. Daily limit, 6 fish, of which no more than 2 may be adult salmon; and of those 2 adult salmon, only 1 may be wild adult coho. Release chum and wild Chinook.

30) Snohomish River (Snohomish County), including all channels, sloughs, and interconnected waterways, but excluding all tributaries: Salmon: Open August 16 until further notice. Daily limit, 3 salmon, plus 1 additional pink. Release Chinook and chum.

31) Snoqualmie River (King County): From the mouth to Plum access: Salmon: Open September 1 until further notice. Daily limit 3 salmon, plus 1 additional pink. Release Chinook and chum.

32) Stillaguamish River (Snohomish County): From the mouth to the forks, including all sloughs: Salmon: Open September 1 until further notice. Daily limit, 2 salmon, plus 2 additional pink. Release Chinook and chum.

33) Tahuya River (Mason County) from the marker approximately one mile upstream of North Shore Road Bridge upstream: Open immediately through August 15, and from October 1 until further notice. Selective gear rules; unlawful to fish from a floating device equipped with an internal combustion motor. Release all fish. Night closure beginning October 1 until further notice.

34) Willapa River (Pacific County):

a) From the mouth to Highway 6 Bridge: Effective immediately until further notice, fishing from a floating device prohibited from second bridge on Camp One Road upstream approximately 0.5 miles to mouth of Mill Creek.

b) South Fork: Open immediately until further notice. Effective immediately until further notice, selective gear rules, and unlawful to fish from a floating device equipped with an internal combustion motor. Anti-snagging rule and night closure in effect beginning August 1 until further notice from the mouth to the Pehl Road Bridge. Closed waters: From falls/fish ladder in Sec. 6, T13N, R8W, downstream 400 feet. All species: Release all fish, except up to 2 hatchery steelhead may be retained. Salmon: Open August 1 until further notice from the mouth to Pehl Road Bridge. Daily limit, 6 fish, of which no more than 3 may be adult salmon. Release chum, wild Chinook and wild coho.

35) Wishkah River (Grays Harbor County), mouth to the mouth of the West Fork: Salmon: Open October 1 until

further notice. Daily limit, 6 fish, of which no more than 2 may be adult salmon; and of the 2 adult salmon, only one may be a wild coho. Release chum and Chinook.

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.

NEW SECTION

WAC 232-28-62100L Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective August 1, 2011, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect.

1) Catch Record Card Area 5:

a) Open August 16 through September 18. Daily limit, 2 salmon, plus 2 additional pink salmon may be retained as part of the daily limit. Release chum, Chinook and wild coho.

b) Open September 19 through September 30. Daily limit, 2 salmon. Release chum and Chinook.

c) October 1 until further notice - Closed waters.

2) Catch Record Card Area 7: October 1 until further notice: Daily limit, 2 salmon, of which no more than 1 may be a Chinook salmon. Release wild coho.

3) Catch Record Card Area 8-1: Open October 1 until further notice. Daily limit, 2 salmon. Release Chinook.

4) Catch Record Card Area 8-2:

a) Effective immediately through September 30.

(i) Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point - Open immediately through September 5, and open only from Friday through 11:59 a.m. Monday of each week; and September 10 through September 25, open only Saturday and Sunday of each week - Daily limit, 2 salmon, plus 2 additional pink salmon may be retained as part of the daily limit. September 26 through September 30 - Same rules as remainder of Area 8-2.

(ii) All other waters of Area 8-2 - Open. Daily limit, 2 salmon, plus 2 additional pink salmon may be retained as part of the daily limit. Release Chinook.

b) Open October 1 until further notice. Daily limit, 2 salmon. Release Chinook. However, closed to salmon fishing in waters north of a line from Camano Head to the fishing boundary marker located approximately 1.4 miles north of Hermosa Point.

5) Catch Record Card Area 9: Effective immediately through August 31: Closed waters south of a line from Foulweather Bluff to Olele Point, except lawful to fish from shore between the Hood Canal Bridge and the northern boundary of Salisbury Point Park. Daily limit, 2 salmon, plus 2 additional pink salmon may be retained as part of the daily limit. Release Chinook and chum.

6) Catch Record Card Area 10: Effective immediately through August 31, waters of Elliott Bay east of a line from West Point to Alki Point - Closed, except that waters west of the Spokane Street Bridge are open August 19 through August 21, and August 26 through August 28. Daily limit 2 salmon, plus 2 additional pink salmon may be retained as part

of the daily limit. Release Chinook and chum. Bait prohibited. Hooks must measure 1/2" or less from point to shank.

7) Catch Record Card Area 12: August 16 until further notice, waters north of a line true east from Broad Spit - Closed waters.

REPEALER

The following sections of the Washington Administrative Code are repealed effective August 1, 2011:

WAC 232-28-61900G Freshwater exceptions to statewide rules—2011 North of Falcon. (11-114)

WAC 232-28-62100K Puget Sound salmon—2011 North of Falcon. (11-114)

WSR 11-16-052

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-170—Filed July 28, 2011, 2:28 p.m., effective August 1, 2011, 6:00 a.m.]

Effective Date of Rule: August 1, 2011, 6:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011 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 (1) closes Catch Areas 23A-E, 26B-1 and 26C, since the quotas will be reached; (2) reduces the spot shrimp weekly limit in SMA 2E; and (3) closes Catch Area 20B and opens Catch Area 20A to beam trawl. 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 28, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

(1) Shrimp pot gear:

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

i) All waters of SMA 1B and the Discovery Bay Shrimp District are closed.

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

iii) All waters of SMA 1C are closed to the harvest of spot shrimp.

iv) Effective 11:59 p.m. August 2, 2011, all waters of Catch Areas 23A-E, 26B-1 and 26C are closed.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) 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 as follows:

i) Effective 12:01 a.m. August 3, 2011, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in SMA 2E.

(d) It is unlawful to pull shellfish pots in more than one Catch Area per day.

(e) 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 vertical knot of one mesh, when the mesh is stretched vertically.

(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, effective 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 21A and 22A within SMA 1B are open, effective immediately, until further notice.

(c) Catch Area 20A is open, effective 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 6:00 a.m. August 1, 2011:

WAC 220-52-05100V Puget Sound shrimp beam trawl fishery—Season. (11-151)

WSR 11-16-053

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-171—Filed July 28, 2011, 2:29 p.m., effective August 1, 2011]

Effective Date of Rule: August 1, 2011.

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: To provide additional angling opportunity from boats in this section of the Yakima River. 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 28, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 232-28-619, effective August 1 through October 31, 2011, use of boats equipped with an internal combustion motor is allowed in waters of the Yakima River from Wapato Dam to the east-bound (upstream) I-82 Bridge at Selah Gap.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2011:

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

WSR 11-16-054**EMERGENCY RULES****HEALTH CARE AUTHORITY**

[Filed July 28, 2011, 3:02 p.m., effective July 29, 2011]

Effective Date of Rule: July 29, 2011.

Purpose: Upon order of the governor, the health care authority (HCA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, HCA is changing the benefit limit for adults, twenty-one years of age and older, receiving medical assistance outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy). The new benefit limits apply to skilled therapy services through a medicare-certified home health agency as well as therapies provided by physical therapists, occupational therapists, and speech therapists in outpatient hospital clinics and free-standing therapy clinics.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-545-300, 182-545-500 and 182-545-700; and amending WAC 182-545-900 and 182-551-2110.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Chapter 564, Laws of 2011 (2ESSHB [2E2SHB] 1738).

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

Reasons for this Finding: The implementation of these emergency rules are necessitated by: (1) The supplemental 2010 state budget bill in which the legislature required the department to take steps to reduce expenditures, including the elimination of optional services, when the agency estimates

program expenditures will exceed legislative appropriations; and (2) HB 1248 which extends the allowance of emergency filing through fiscal year 2013. Delaying the adoption of these changes in benefit limits to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of HCA clients. This emergency rule is necessary to continue the current emergency rule adopted under WSR 11-08-021 while the permanent rule-making process is completed. A CR-102 is being filed shortly.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 3.

Date Adopted: July 28, 2011.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION**WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy).**

(1) The following health professionals may enroll with the agency to provide outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy) within their scope of practice to eligible clients:

- (a) A licensed occupational therapist;
- (b) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (c) A licensed physical therapist or physiatrist;
- (d) A physical therapist assistant supervised by a licensed physical therapist;
- (e) A speech-language pathologist who has been granted a certificate of clinical competence by the American Speech, Hearing and Language Association; and
- (f) A speech-language pathologist who has completed the equivalent educational and work experience necessary for such a certificate.

(2) Clients in the following agency programs are eligible to receive outpatient rehabilitation as described in this chapter:

- (a) Categorically needy program (CNP);
- (b) Categorically needy program-state children's health insurance program (CNP-SCHIP);
- (c) Children's healthcare programs as defined in WAC 388-505-0210;
- (d) Disability lifeline (formerly general assistance unemployment) (within Washington state or border areas only);

(e) Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) (within Washington state or border areas only);

(f) Medically needy program (MNP) only when the client is either:

(i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis and treatment program (healthy kids program) as described in chapter 182-534 WAC; or

(ii) Receiving home health care services as described in chapter 182-551 WAC, subchapter II.

(3) Clients who are enrolled in an agency-contracted managed care organization (MCO) must arrange for outpatient rehabilitation directly through his or her agency-contracted MCO.

(4) The agency pays for outpatient rehabilitation when the services are:

(a) Covered;

(b) Medically necessary;

(c) Within the scope of the eligible client's medical care program;

(d) Ordered by a physician, physician's assistant (PA) or an advanced registered nurse practitioner (ARNP);

(e) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and numbered memoranda;

(f) Begun within thirty days of the date ordered;

(g) Provided by one of the health professionals listed in subsection (1) of this section;

(h) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and numbered memoranda; and

(i) Provided as part of an outpatient treatment program:

(i) In an office or outpatient hospital setting;

(ii) In the home, by a home health agency as described in chapter 182-551 WAC;

(iii) In a neurodevelopmental center, as described in WAC 182-545-900; or

(iv) For children with disabilities, age two or younger, in natural environments including the home and community setting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

(5) For eligible clients, twenty years of age and younger, the agency covers unlimited outpatient rehabilitation.

(6) The agency pays for outpatient rehabilitation for adults twenty-one years of age and older as a short-term benefit to treat an acute medical condition, disease, or deficit resulting from a new injury or post-surgery.

(7) Outpatient rehabilitation for clients twenty-one years of age and older must:

(a) Meet reasonable medical expectation of significant functional improvement within sixty days of initial treatment;

(b) Restore or improve the client to a prior level of function that has been lost due to medically documented injury or illness;

(c) Meet currently accepted standards of medical practice and be specific and effective treatment for the client's existing condition; and

(d) Include an on-going management plan for the client and/or the client's caregiver to support timely discharge and continued progress.

(8) For eligible adults, twenty-one years of age and older, the agency limits coverage of outpatient rehabilitation as follows:

(a) Occupational therapy, per client, per year:

(i) Without authorization:

(A) One occupational therapy evaluation;

(B) One occupational therapy reevaluation at time of discharge; and

(C) Twenty-four units of occupational therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy when medically necessary and the client's diagnosis is any of the following:

(A) Acute, open, or chronic nonhealing wounds;

(B) Brain injury with residual functional deficits within the past twenty-four months;

(C) Burns - Second or third degree only;

(D) Cerebral vascular accident with residual functional deficits within the past twenty-four months;

(E) Lymphedema;

(F) Major joint surgery - Partial or total replacement only;

(G) New onset muscular-skeletal disorders such as complex fractures which required surgical intervention or surgeries involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(H) New onset neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(I) Reflex sympathetic dystrophy;

(J) Swallowing deficits due to injury or surgery to face, head, or neck;

(K) Spinal cord injury resulting in paraplegia or quadriplegia within the past twenty-four months; or

(L) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(b) Physical therapy, per client, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy reevaluation at time of discharge; and

(C) Twenty-four units of physical therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of physical therapy when medically necessary and the client's diagnosis is any of the following:

(A) Acute, open, or chronic nonhealing wounds;

(B) Brain injury with residual functional deficits within the past twenty-four months;

(C) Burns - Second and/or third degree only;

(D) Cerebral vascular accident with residual functional deficits within the past twenty-four months;

(E) Lymphedema;

(F) Major joint surgery - Partial or total replacement only;

(G) New onset muscular-skeletal disorders such as complex fractures which required surgical intervention or surgery-

ies involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(H) New onset neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(I) Reflex sympathetic dystrophy;

(J) Spinal cord injury resulting in paraplegia or quadriplegia within the past twenty-four months; or

(K) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the agency.

(c) Speech therapy, per client, per year:

(i) Without authorization:

(A) One speech language pathology evaluation;

(B) One speech language pathology reevaluation at the time of discharge; and

(C) Six units of speech therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to six additional units of speech therapy when medically necessary and the client's diagnosis is any of the following:

(A) Brain injury with residual functional deficits within the past twenty-four months;

(B) Burns of internal organs such as nasal oral mucosa or upper airway;

(C) Burns of the face, head, and neck - Second or third degree only;

(D) Cerebral vascular accident with residual functional deficits within the past twenty-four months;

(E) New onset muscular-skeletal disorders such as complex fractures which require surgical intervention or surgery involving the vault, base of the skull, face, cervical column, larynx, or trachea;

(F) New onset neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infection polyneuritis (Guillain-Barre));

(G) Speech deficit due to injury or surgery to face, head, or neck;

(H) Speech deficit which requires a speech generating device;

(I) Swallowing deficit due to injury or surgery to face, head, or neck; or

(J) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the agency.

(d) Durable medical equipment (DME) needs assessments, two per client, per year.

(e) Orthotics management and training of upper and/or lower extremities, two program units, per client, per day.

(f) Orthotic/prosthetic use, two program units, per client, per year.

(g) Muscle testing, one procedure, per client, per day. Muscle testing procedures cannot be billed in combination with each other. These procedures can be billed alone or with other physical and occupational therapy procedures.

(h) Wheelchair needs assessment, one per client, per year.

(9) For the purposes of this chapter:

(a) Each fifteen minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(10) For expedited prior authorization (EPA):

(a) A provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this section and in the agency's published outpatient rehabilitation billing instructions;

(b) The appropriate EPA number must be used when the provider bills the agency;

(c) Upon request, a provider must provide documentation to the agency showing how the client's condition met the criteria for EPA; and

(d) A provider may request expedited prior authorization once per year, per client, per each therapy type.

(11) The agency evaluates a request for outpatient rehabilitation that is in excess of the limitations or restrictions, according to WAC 182-501-0169.

(12) Duplicate services for outpatient rehabilitation are not allowed for the same client when both providers are performing the same or similar procedure(s).

(13) The agency does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(14) The agency does not reimburse a healthcare professional for outpatient rehabilitation performed in an outpatient hospital setting when the healthcare professional is not employed by the hospital. The hospital must bill the agency for the services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-545-900 Neurodevelopmental centers. (1)

This section describes:

(a) Neurodevelopmental centers that may be reimbursed by the ~~((department))~~ agency;

(b) Clients who may receive covered services at a neurodevelopmental center; and

(c) Covered services that may be provided at and reimbursed to a neurodevelopmental center.

(2) In order to provide and be reimbursed for the services listed in subsection (4) of this section, the ~~((department))~~ agency requires a neurodevelopmental center provider to do all of the following:

(a) Be contracted with the department of health (DOH) as a neurodevelopmental center;

(b) Provide documentation of the DOH contract to the ~~((department))~~ agency; and

(c) ~~((Sign a))~~ Have an approved core provider agreement with the ~~((department); and~~

~~((d) Receive a neurodevelopmental center provider number from the department))~~ agency.

(3) Clients ~~((who are)),~~ twenty years of age or younger ~~((and who meet the following eligibility criteria)),~~ may receive ~~((covered services from))~~ outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy) in agency-approved neurodevelopmental centers ~~((:~~

~~((a) For occupational therapy, refer to WAC 388-545-300(2);~~

~~((b) For physical therapy, refer to WAC 388-545-500(2);~~

~~(c) For speech therapy and audiology services, refer to WAC 388-545-700(2); and~~

~~(d) For early and periodic screening, diagnosis and treatment (EPSDT) screening by physicians, refer to WAC 388-534-0100).~~

(4) The ~~((department))~~ agency reimburses neurodevelopmental centers for providing the following services to clients ~~((who meet the requirements in subsection (3) of this section))~~:

(a) ~~((Occupational therapy services as described in WAC 388-545-300))~~ Outpatient rehabilitation services as described in WAC 182-545-200; and

(b) ~~((Physical therapy services as described in WAC 388-545-500;~~

~~(c) Speech therapy and audiology services as described in WAC 388-545-700; and~~

~~((d))~~ Specific pediatric evaluations and team conferences that are:

(i) Attended by the center's medical director; and

(ii) Identified as payable in the ~~((department's))~~ agency's billing instructions.

(5) In order to be reimbursed, neurodevelopmental centers must meet the ~~((department's))~~ agency's billing requirements in WAC 182-502-0020, 182-502-0100 and 182-502-0150.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-545-300	Occupational therapy.
WAC 182-545-500	Physical therapy.
WAC 182-545-700	Speech/audiology services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-2110 Home health services—Covered specialized therapy. ~~((1))~~ The ~~((department limits))~~ agency covers specialized therapy ~~((visits to one per client, per day, per type of specialized therapy))~~ (also known as outpatient rehabilitation) in an in-home setting by a home health agency. See chapter 182-545 WAC outpatient rehabilitation for coverage and limitations. Specialized therapy is defined in WAC ~~((388-551-2010))~~ 182-551-2010.

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

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

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

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

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed upon with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-upon management plans, and are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, 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 29, 2011.

Joe Stohr
for Philip Anderson
Director

WSR 11-16-059

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-173—Filed July 29, 2011, 9:13 a.m., effective August 1, 2011]

Effective Date of Rule: August 1, 2011.

NEW SECTION

WAC 232-28-61900H Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided

that unless otherwise amended, all permanent rules remain in effect:

(1) Salmon and steelhead - It is permissible to use barbed hooks unless otherwise restricted. Anglers may not possess in the field salmon or steelhead mutilated so that size, species, or fin clip cannot be determined until the angler has reached their automobile or principle means of land transportation.

(a) From a true north-south line through Buoy 10, upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank: Salmon and steelhead: August 1 through August 28, daily limit, 2 salmon or 2 hatchery steelhead or one of each; only 1 may be a Chinook. Release all salmon except Chinook and hatchery coho. Chinook minimum length 24 inches. Coho minimum length 16 inches. August 29 through September 30, daily limit 2 hatchery coho or 2 hatchery steelhead or one of each. Release all salmon other than hatchery coho. Coho minimum length 16 inches. October 1 until further notice, daily limit, 6 fish, of which no more than 2 may be adult salmon or hatchery steelhead, or one of each. Release all salmon except Chinook and hatchery coho.

(b) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, upstream to the I-5 Bridge: Salmon and steelhead: August 1 through September 9, daily limit, 6 fish, of which no more than 2 may be adult salmon or hatchery steelhead or one of each; of the adult salmon, only 1 may be a Chinook. Release all salmon except Chinook and hatchery coho. September 10 until further notice, daily limit, 6 fish, of which no more than 2 may be adult salmon or hatchery steelhead or one of each. Release all salmon except Chinook and hatchery coho, and September 10 through September 30 release Chinook downstream of a line projected from the Warrior Rock Lighthouse, through Red Buoy #4, to the orange marker atop the dolphin on the Washington shore.

(c) From the I-5 Bridge to Bonneville Dam: Salmon and steelhead: August 1 through September 9, daily limit, 6 fish, of which no more than 2 may be adult salmon or hatchery steelhead or one of each; of the adult salmon, only 1 may be a Chinook. Release all salmon except Chinook and hatchery coho. September 10 until further notice, daily limit, 6 fish, of which no more than 2 may be adult salmon or hatchery steelhead or one of each. Release all salmon except Chinook and hatchery coho.

WSR 11-16-060

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-175—Filed July 29, 2011, 9:19 a.m., effective August 1, 2011]

Effective Date of Rule: August 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000D; 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 quota and guideline remain in ocean areas to allow expanded opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 29, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62000E Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective August 1, 2011, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect. An area is open when a daily limit is provided:

(1) **Catch Record Card Area 1:** Open immediately through September 30. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(2) **Catch Record Card Area 2:** Open immediately through September 18. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

a) September 19 until further notice - Closed.

(3) **Willapa Bay (Catch Record Card Area 2-1):** Open August 1 until further notice - Daily limit of six salmon, not more than three of which may be adult salmon. Release chum and wild Chinook.

(4) **Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**

a) Open September 16 until further notice - Daily limit of 2 salmon. Release Chinook and chum.

b) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only August 16 until further notice - Daily limit of six salmon, not more than four of which may be adult salmon. Release wild Chinook.

(5) Catch Record Card Area 3:

a) Open immediately through September 18. Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

b) September 19 until further notice - Closed.

c) Notwithstanding the provisions of this subsection, waters north of 47°50'00"N latitude and south of 48°00'00"N latitude also open September 24 through October 9 - Daily limit two salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

(6) Catch Record Card Area 4:

a) Open immediately through September 18 - Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho salmon. Waters east of a true north-south line through Sail Rock closed June 26 through July 31. Release Chinook salmon caught east of the Bonilla-Tatoosh line beginning August 1. Release chum salmon beginning August 1.

b) September 19 until further notice - Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-62000D Coastal salmon—Saltwater seasons and daily limits. (11-114)

**WSR 11-16-061
EMERGENCY RULES**

**OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2011-14—Filed July 29, 2011, 10:20 a.m., effective July 29, 2011, 10:20 a.m.]

Effective Date of Rule: Immediately.

Purpose: To bring Washington state's requirements for nongrandfathered health plans into compliance with the Affordable Care Act (ACA) requirements for review of adverse benefit determinations, and provide that all plans, both grandfathered and nongrandfathered, must continue to address grievances.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-410, 284-43-615, and 284-43-620.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.530.

Other Authority: P.L. 111-148 (2010, as amended) and implementing regulations.

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

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

Reasons for this Finding: In guidance issued by the United States Department of Health and Human Services (HHS), states were advised that HHS would review state law as of July 31, 2011, to determine whether the state process was compliant with the ACA's requirements for review of adverse benefit determinations. If a state is not deemed compliant, as of January 1, 2012, the federal government preempts the state appeal process, and a state must reapply to use its process. Because carriers and health plans need time to amend plan documents and file them for approval with this office, and because the commissioner finds that the stability of the individual and small group markets is best served by being deemed compliant with federal law, adoption of these rules on an emergency basis is justified.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 12, 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 2, 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 29, 2011.

Mike Kreidler
Insurance Commissioner

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-17 issue of the Register.

**WSR 11-16-064
EMERGENCY RULES
DEPARTMENT OF HEALTH**

[Filed July 29, 2011, 1:44 p.m., effective July 29, 2011, 1:44 p.m.]

Effective Date of Rule: Immediately.

Purpose: Chapter 246-305 WAC, Certification of independent review organizations, the department is amending the rules to comply with the new federal standards which includes general housekeeping edits.

Citation of Existing Rules Affected by this Order: Amending WAC 246-305-001, 246-305-010, 246-305-020, 246-305-030, 246-305-040, 246-305-050, 246-305-060, 246-305-070, 246-305-080, 246-305-090, 246-305-100, 246-305-110, and 246-305-990.

Statutory Authority for Adoption: RCW 43.70.235 and 48.43.535.

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

Reasons for this Finding: The Affordable Care Act of 2010 requires independent review processes in all states to meet specific minimum consumer protections. The federal government will start reviewing state processes effective July 31, 2011, to determine compliance with federal law. If the department does not complete rule making, the state will be deemed noncompliant with the federal requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 8, 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 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 13, Repealed 0.

Date Adopted: July 28, 2011.

Mary C. Selecky
Secretary

Chapter 246-305 WAC

CERTIFICATION OF INDEPENDENT REVIEW ORGANIZATIONS (IROs)

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-001 Purpose and scope. (1) Purpose. These rules are adopted by the Washington state department of health to implement the provisions of RCW 43.70.235 regarding the certification of independent review organizations (IROs). Certified (~~independent review organizations~~) IROs are qualified to receive referrals from the insurance commissioner or designee under RCW 48.43.535 to make binding determinations related to health care coverage and payment disputes between health insurance carriers and their enrollees.

(2) Other applicable rules. Independent review (~~also~~) is also subject to rules of the insurance commissioner implementing RCW 48.43.535.

(3) Applicability. These rules apply to independent review cases originating in Washington state under RCW 48.43.535, and to independent review organizations conducting these reviews.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-010 Definitions. (~~For the purpose of this chapter, the following words and phrases shall have the following meanings~~) The definitions in this section apply throughout the chapter unless the context clearly (~~indicates~~) requires otherwise.

(1) "Adverse benefit determination" means a (~~decision by a health carrier to deny, modify, reduce, or terminate coverage of or payment for a health care service for an enrollee~~) denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit. This may include a denial, reduction, termination, or failure to provide or make payment based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental, or investigational, or not medically necessary or appropriate.

(2) "Applicant" means a person or entity seeking to become a Washington certified (~~IRO~~) independent review organization(~~s~~) (IRO).

(3) "Attending provider" includes "treating provider" or "ordering provider" as used in WAC 284-43-620 and 284-43-630.

(4) "Carrier" or "health carrier" has the same meaning in this chapter as in WAC 284-43-130.

(5) "Case" means a dispute relating to a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for health care service for an enrollee, which has been referred to a specific IRO by the insurance commissioner under RCW 48.43.535.

(6) "Clinical peer" means a physician or other health professional who holds an unrestricted license or certification and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category, as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(7) "Clinical reviewer" means a medical reviewer, as defined in this section.

(8) "Conflict of interest" means violation of any provision of WAC 246-305-030, including, but not limited to, material familial, professional and financial affiliations.

(9) "Contract specialist" means a reviewer who deals with interpretation of health plan coverage provisions. If a clinical reviewer is also interpreting health plan coverage provisions, that reviewer must have the qualifications required of a contract specialist.

(10) "Department" means the Washington state department of health.

(11) "Enrollee" means (~~an~~) an (~~covered person~~) appellant as defined in WAC 284-43-130. "Enrollee" also means a person lawfully acting on behalf of the enrollee, including, but not limited to, a parent or guardian.

(12) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(13) "Health care provider" or "provider" means a person practicing health care services consistent with Washington state law, or a person with valid credentials from another state for a similar scope of practice.

~~((13))~~ (14) "Independent review" means the process of review and determination of a case referred to an IRO under RCW 48.43.535.

~~((14))~~ (15) "Independent review organization" or "IRO" means an entity certified by the department under this chapter.

~~((15))~~ (16) "IRO," see independent review organization.

~~((16))~~ (17) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

~~((17))~~ (18) "Material professional affiliation" includes, but is not limited to, any provider-patient relationship, any partnership or employment relationship, or a shareholder or similar ownership interest in a professional corporation.

~~((18))~~ (19) "Material financial affiliation" means any financial interest including employment, contract or consultation which generates more than five percent of total annual revenue or total annual income of an IRO or an individual director, officer, executive or reviewer of the IRO. This includes a consulting relationship with a manufacturer regarding technology or research support for a specific product.

~~((19))~~ (20) "Medical reviewer" means a physician or other health care provider who is assigned to an external review case by a certified IRO, consistent with this chapter.

~~((20))~~ (21) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical practice of any health profession which complies with one or more of the following requirements:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS data base Health Services Technology Assessment Research (HSTAR);

(c) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861 (t)(2) of the federal Social Security Act;

(d) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal

Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, ~~((Health Care Financing Administration))~~ Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(f) Clinical practice guidelines that meet Institute of Medicine criteria; or

(g) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

~~((21))~~ (22) "Referral" means receipt by an IRO of notification from the insurance commissioner or designee that a case has been assigned to that IRO under provisions of RCW 48.43.535.

~~((22))~~ (23) "Reviewer" or "expert reviewer" means a clinical reviewer or a contract specialist, as defined in this section.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-020 General requirements for certification. In order to qualify for certification, an IRO (~~((must))~~) shall:

(1) Submit an application for certification to the department as described in WAC 246-305-080.

(2) Hold a current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process.

(3) Demonstrate expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and the application of other health plan coverage provisions.

~~((2))~~ (4) Demonstrate the ability to handle a full range of review cases occurring in Washington state. Certified IROs may contract with more specialized review organizations; however, the certified IRO (~~((must))~~) shall ensure that each review conducted meets all the requirements of this chapter.

~~((3))~~ (5) Demonstrate capability to review administrative and contractual coverage issues, as well as medical necessity and effectiveness, and the appropriateness of experimental and investigational treatments.

~~((4))~~ (6) Comply with all conflict of interest provisions in WAC 246-305-030.

~~((5))~~ (7) Maintain and assign qualified expert reviewers in compliance with WAC 246-305-040.

~~((6))~~ (8) Conduct reviews, reach determinations and document determinations consistent with WAC 246-305-050 and 246-305-060.

~~((7))~~ (9) Maintain administrative processes and capabilities in compliance with WAC 246-305-070.

~~((8))~~ File an application for certification meeting the requirements of WAC 246-305-080.)

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-030 Conflict of interest. (1) An IRO:

(a) Must not be a subsidiary of, or in any way owned or controlled by, a carrier or an association of health care providers or carriers;

(b) ~~((Must))~~ Shall provide information to the department on its own organizational affiliations and potential conflicts of interest at the time of application and when material changes occur;

(c) ~~((Must))~~ Shall immediately turn down a case referred by the insurance commissioner if accepting it would constitute an organizational conflict of interest; and

(d) ~~((Must))~~ Shall ensure that reviewers are free from any actual or potential conflict of interest in assigned cases.

(2) An IRO, as well as its reviewers, must not have any material familial, professional, ~~((familial,))~~ or financial affiliation, as defined in WAC 246-305-010, with the health carrier, enrollee, enrollee's provider, that provider's medical or practice group, the facility at which the service would be provided, or the developer or manufacturer of a drug or device under review. An affiliation with any director, officer or executive of an IRO ~~((shall))~~ must be considered to be an affiliation with the IRO.

(3) The following do not constitute violations of this section:

(a) Staff affiliation with an academic medical center or National Cancer Institute-designated clinical cancer research center;

(b) Staff privileges at a health care facility;

(c) Maintaining a provider contract with a carrier which provides no more than five percent of the provider's or clinical group's annual revenue; or

(d) An IRO's receipt of a carrier's payment for independent reviews assigned by the insurance commissioner under RCW 48.43.535.

(4) Notwithstanding the provisions of subsection (3) of this section, a potential reviewer ~~((shall))~~ must be considered to have a conflict of interest with regard to a facility or health plan, regardless of revenue from that source, if the potential reviewer is a member of a standing committee of: The facility, the health plan, or a provider network that contracts with the health plan.

(5) A conflict of interest may be waived only if both the enrollee and the health plan agree in writing after receiving full disclosure of the conflict, and only if:

(a) The conflict involves a reviewer, and no alternate reviewer with necessary special expertise is available; or

(b) The conflict involves an IRO and the insurance commissioner determines that seeking a waiver of conflict is preferable to reassigning the review to a different IRO.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-040 Expert reviewers. (1) Each IRO ~~((must))~~ shall maintain an adequate number and range of qualified expert reviewers in order to:

(a) Make determinations regarding the full range of independent review cases occurring in Washington state under RCW 48.43.535; and

(b) Meet timelines specified in WAC 246-305-050(3) including those for expedited review.

(2) All reviewers ~~((shall))~~ must be health care providers with the exception of contract specialists.

(3) IROs must maintain policies and practices that assure that all clinical reviewers:

(a) Hold a current, unrestricted license, certification, or registration in Washington state, or current, unrestricted credentials from another state with substantially comparable requirements, as determined by the department and outlined in the ~~((November 2000))~~ May 2011 edition of the department of health publication, *Health Care Professional Credentialing Requirements*;

(b) Have at least five years of recent clinical experience;

(c) Are board-certified in the case of a medical doctor, a doctor of osteopathy, a podiatrist, or a member of another profession in which board certification exists as determined by the department of health; and

(d) Have the ability to apply scientific standards of evidence in judging research literature pertinent to review issues, as demonstrated through relevant training or professional experience.

(4) Contract specialists must be knowledgeable in health insurance contract law, as evidenced by training and experience, but do not need to be an attorney or have any state credential.

(5) Assignment of appropriate reviewers to a case.

(a) An IRO shall assign one or more expert reviewer to each case, as necessary to meet requirements of this subsection.

(b) Any reviewer assigned to a case ~~((must))~~ shall comply with the conflict of interest provisions in WAC 246-305-030.

(c) The IRO shall assign one or more clinical reviewers to each case. ~~((At least one))~~ All clinical reviewers assigned to ~~((each))~~ a case ~~((must))~~ shall each meet ~~((each of))~~ the following requirements:

~~((i))~~ ~~((Have expertise to address each of the issues that are the source of the dispute;~~

~~((ii))~~ ~~((Be))~~ A clinical peer as defined in WAC 246-305-010(6);

An expert in the treatment of the enrollee's medical condition that is the subject of the external review;

Knowledgeable about the recommended health care service or treatment through five years of recent or current actual clinical experience treating patients with the same or similar medical condition of the enrollee. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement; and

~~((iii))~~ (iv) Have the ability to evaluate alternatives to the proposed treatment.

~~((All clinical reviewers assigned must have at least five years of recent clinical experience dealing with the same health conditions under review or similar conditions. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement.~~

~~((e))~~ If contract interpretation issues must be addressed, a contract specialist must be assigned to the review.

~~((f))~~ (e) Each IRO ~~((must))~~ shall have a policy specifying the number and qualifications of reviewers to be assigned to each case. The number of expert reviewers should be dictated by what it takes to meet the requirements of this subsection.

(i) The number of expert reviewers should reflect the complexity of the case, the goal of avoiding unnecessary cost, and the need to avoid tie votes.

(ii) The IRO may consider, but shall not be bound by, recommendations regarding complexity from the carrier or attending provider.

(iii) Special attention should be given to situations such as review of experimental and investigational treatments that may benefit from an expanded panel.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-050 Independent review process. (1) Information for review.

(a) IROs ~~((must))~~ shall, as necessary, request ~~((as necessary)),~~ accept, and consider the following information as relevant to a case ~~((referred))~~:

(i) Information that the carrier is required to submit to the IRO under WAC 284-43-630, including information identified in that section that is initially missing or incomplete as submitted by the carrier.

(ii) Other medical, scientific, and cost-effectiveness evidence which is relevant to the case. For the purposes of this section, medical, scientific, and cost-effectiveness evidence has the meaning ~~((assigned))~~ defined in WAC 246-305-010.

(b) After referral of a case, an IRO ~~((must))~~ shall accept additional information from the enrollee, the carrier, or a provider acting on behalf of the enrollee or at the enrollee's request, provided the information is submitted within ~~((seven calendar))~~ five business days of the referral or, in the case of an expedited referral, within twenty-four hours. The additional information must be related to the case and relevant to statutory criteria.

(c) The IRO shall forward this information to the carrier within one business day of receipt of the information.

(2) Completion of reviews~~((:))~~. Once the insurance commissioner or designee refers a review, the IRO ~~((must))~~ shall proceed to final determination unless requested otherwise by both the carrier and the enrollee or the carrier notifies the IRO it has reversed its adverse benefit determination.

(3) Time frames for reviews.

(a) An IRO ~~((must))~~ shall make its determination within the following time limits:

(i) If the review is not expedited, within fifteen days after receiving necessary information, or within twenty days after receiving the referral, whichever is earlier. In exceptional circumstances where information is incomplete, the determination may be delayed until no later than twenty-five days after receiving the referral.

(ii) If the review is expedited, as defined in WAC 284-43-625, within seventy-two hours after receiving ~~((all necessary information, or within eight days after receiving))~~ the referral~~((, whichever is earlier. Expedited time frames apply when a condition could seriously jeopardize the enrollee's~~

~~health or ability to regain maximum function, as determined consistent with WAC 284-43-620)).~~ If information on whether a referral is expedited is not provided to the IRO, the IRO may presume that it is not an expedited review, but the IRO has the option to seek clarification from the insurance commissioner or designee.

(b) An IRO ~~((must))~~ shall provide notice to enrollees and the carrier of the result and basis for the determination, consistent with subsection (5) of this section, within two business days of making a determination in regular cases and immediately in expedited cases.

(c) As used in this subsection, a day is a calendar day, except that if the period ends on a weekend or an official Washington state holiday, the time limit is extended to the next business day. A business day is any day other than Saturday, Sunday or an official Washington state holiday.

(4) Decision-making procedures.

(a) The independent review process is intended to be neutral and independent of influence by any affected party or by state government. The department may conduct investigations under the provisions of this chapter but the department has no involvement in the disposition of specific cases.

(b) Independent review is a paper review process. These rules do not establish a right to in-person participation or attendance by the enrollee, the health plan, or the attending provider nor to reconsideration of IRO determinations.

(c) An IRO shall present cases to reviewers in a way that maximizes the likelihood of a clear, unambiguous determination. This may involve stating or restating the questions for review in a clear and precise manner that encourages yes or no answers.

(d) If more than one reviewer is used, the IRO shall:

(i) Provide an opportunity for the reviewers to exchange ideas and opinions about the case with one another, if requested by a reviewer. This ~~((shall))~~ must be done in a manner that avoids pressure on reviewers to take a position with which they do not agree and preserves a dissenting reviewer's opportunity to document the rationale for dissent in the case file.

(ii) Accept the majority decision of the clinical reviewers in determining clinical issues.

(e) When a case requires an interpretation regarding the application of health plan coverage provisions, that determination ~~((shall))~~ must be made by a reviewer or reviewers who are qualified as contract specialists.

(f) An IRO may uphold an adverse benefit determination if the patient or any provider refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond. An IRO may overturn an adverse benefit determination if the carrier refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond.

(g) If reviewers are deadlocked, the IRO may add another reviewer if time allows.

(h) If all pertinent information has been disclosed and reviewers are unable to make a determination, the IRO shall decide in favor of the enrollee.

(5) Notification and documentation of determinations. An IRO ~~((must))~~ shall notify the enrollee and the carrier of the result and rationale for the determination, including its

clinical basis unless the decision is wholly based on application of coverage provisions, within the time frame in subsection (3)(b) of this section.

(a) Documentation of the basis for the determination shall include references to ~~((support))~~ supporting evidence, and if applicable, the rationale for any interpretation regarding the application of health plan coverage provisions.

(b) If the determination overrides the health plan's medical necessity or appropriateness standards, the rationale shall document why the health plan's standards are unreasonable or inconsistent with sound, evidence-based medical practice.

(c) The written report shall include the qualifications of reviewers but shall not disclose the identity of the reviewers.

(d) Notification of the determination ~~((shall))~~ must be provided initially by ~~((phone))~~ telephone, e-mail, or ~~((fax))~~ facsimile, followed by a written report by mail. In the case of expedited reviews the initial notification ~~((shall))~~ must be immediate and by ~~((phone))~~ telephone.

NEW SECTION

WAC 246-305-051 Additional requirements for experimental or investigational treatment reviews. (1) In addition to the qualifications listed in WAC 246-305-040 (3) and (5), at least part of the clinical reviewers' relevant, recent clinical experience must have been obtained in the past three years.

(2) Each clinical reviewer shall consider the following information, if appropriate and available, in reaching an opinion:

- (a) The enrollee's pertinent medical records;
- (b) The attending physician or health care provider's recommendation;
- (c) Consulting reports from appropriate health care providers and other documents submitted by the carrier, enrollee, or enrollee's authorized representative, or the enrollee's treating physician or health care provider;
- (d) The terms of coverage under the enrollee's health benefit plan with the carrier to ensure that, but for the carrier's determination, the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the reviewer's opinion is not contrary to the terms of coverage under the enrollee's health benefit plan with the carrier; and
- (e) Whether:
 - (i) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or
 - (ii) Medical or scientific evidence or evidence-based standards demonstrate that the recommended or requested health care service or treatment is more likely than any available standard health care service or treatment to be beneficial to the enrollee and the adverse risks would not be substantially increased over those of available standard health care services or treatments.

(3) Clinical reviewers shall include the following in their written opinions to the IRO:

- (a) A description of the enrollee's medical condition;
- (b) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that

the recommended or requested health care service or treatment is likely to be more beneficial to the enrollee than any available standard health care services or treatments and the adverse risks would not be substantially increased over those of available standard health care services or treatments;

(c) A description and analysis of any medical, scientific evidence, or cost-effectiveness evidence as defined in WAC 246-305-010(21);

(d) A description and analysis of any evidence-based standard as defined in WAC 246-305-010(12); and

(e) Information on whether the reviewer's rationale for the opinion is based on subsection (2)(e)(i) or (ii) of this section.

(4) IROs shall include the following in their notification of the results and rationale for the determination:

- (a) A general description of the reason for the request for external review;
- (b) The written opinion of each clinical reviewer, including whether the recommended or requested health care service or treatment should be covered and the rationale for each reviewer's recommendation;
- (c) The date the review was requested;
- (d) The date the review was conducted;
- (e) The date of the IRO's decision;
- (f) The principle reason or reasons for the IRO's decision; and
- (g) The rationale for the IRO's decision.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-060 Criteria and considerations for independent review determinations. (1) General criteria and considerations.

(a) ~~((An IRO's))~~ The determination must ~~((use fair procedures and))~~ be consistent with the standards in RCW 43.70.235, 48.43.535, and ~~((this))~~ chapter 246-305 WAC.

(b) The expert reviewers from a certified IRO will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee.

(c) The IRO ~~((must))~~ shall ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement.

(i) Clinical reviewers may override the health plan's medical necessity or appropriateness standards only if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice, or experimental or investigational treatment protocols.

(ii) Reviewers may make determinations about the application of general health plan coverage provisions to specific issues concerning health care services for an enrollee. For example, whether a specific service is excluded by more general benefit exclusion language may require independent interpretation.

(2) Medical necessity and appropriateness—Criteria and considerations. Only clinical reviewers may determine whether a service, which is the subject of an adverse decision, is medically necessary and appropriate. These determinations must be based upon their expert clinical judgment, after con-

sideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in ~~((the))~~ Washington state ~~((of Washington))~~.

(a) Medical standards of practice include the standards appropriately applied to physicians or other health care providers, as pertinent to the case.

(b) In considering medical standards of practice within ~~((the))~~ Washington state ~~((of Washington))~~:

(i) Clinical reviewers may use national standards of care, absent evidence presented by the health plan or enrollee that the Washington state standard of care is different.

(ii) A health care service or treatment should be considered part of the Washington state standard of practice if reviewers believe that failure to provide it would be inconsistent with that degree of care, skill and learning expected of a reasonably prudent health care provider acting in the same or similar circumstances.

(c) Medical necessity will be a factor in most cases referred to an IRO, but not necessarily in all. See WAC 246-305-060(3).

(3) Health plan coverage provisions—Criteria and considerations. The following requirements ~~((shall))~~ must be observed when a review requires making determinations about the application of health plan coverage provisions to issues concerning health care services for an enrollee.

(a) These determinations ~~((shall))~~ must be made by one or more contract specialists meeting the requirements of WAC 246-305-040(4), except that a clinical determination of medical necessity or appropriateness, by itself, is not an interpretation of the scope of covered benefits and does not require a contract specialist.

(b) If the full health plan coverage agreement has not already been provided by the carrier ~~((pursuant to))~~ under WAC 284-43-630 (2)(f) of the insurance commissioner, the IRO shall request additional provisions from the health plan coverage agreement in effect during the relevant period of the enrollee's coverage, as necessary to have an adequate context for determinations.

(c) In general, the IRO and its contract specialists may assume that the contractual health plan coverage provisions themselves are consistent with the Washington Insurance Code (Title 48 RCW), absent information to the contrary. Primary responsibility for determining consistency with the insurance code, when at issue, rests with the insurance commissioner.

(4) No provision of this chapter should be interpreted to establish a standard of medical care, or to create or eliminate any cause of action.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-070 Administrative processes and capabilities of ~~((independent review organizations))~~ IROs. (1) An IRO ~~((must))~~ shall maintain written policies and procedures covering all aspects of review.

(2) An IRO ~~((must))~~ shall ensure the confidentiality of medical records and other personal health information received for use in independent reviews, in accordance with applicable federal and state laws.

(3) An IRO ~~((must))~~ shall have a quality assurance ~~((mechanism))~~ program that ensures the timeliness, quality of review, and communication of determinations to enrollees and carriers. The ~~((mechanism must also))~~ quality assurance program shall ensure the qualifications, impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers.

(a) The quality assurance program ~~((must))~~ shall include a written plan addressing scope and objectives, program organization, monitoring and oversight mechanisms, and evaluation and organizational improvement of IRO activities.

(b) Quality of reviews includes use of appropriate methods to match the case, confidentiality, and systematic evaluation of complaints for patterns or trends. Complaints must be recorded on a log, including the nature of the complaint and ~~((how resolved))~~ the resolution. The department reserves the right to examine both the complaints and the log.

(c) Organizational improvement efforts must include the implementation of action plans to improve or correct identified problems, and communication of the results of action plans to staff and reviewers.

(4) An IRO ~~((must))~~ shall maintain case logs and case files with full documentation of referrals, reviewers, questions posed, information considered (including sources of the information and citations of studies or criteria), determinations and their rationale, communication with parties in the dispute including notices given, and key dates in the process, for at least ~~((two))~~ three years following the review.

(5) An IRO ~~((must))~~ shall maintain a training program for staff and expert reviewers, addressing at least:

(a) Confidentiality;

(b) Neutrality and conflict of interest;

(c) Appropriate conduct of reviews;

(d) Documentation of evidence for determination; and

(e) In the case of contract specialists, principles of health contract law and any provisions of Washington state law determined to be essential.

(6) An IRO ~~((must))~~ shall maintain business hours, methods of contact (including by telephone), procedures for after-hours requests, and other relevant procedures to ensure timely availability to conduct expedited as well as regular reviews.

(7) An IRO shall not disclose reviewers' identities. The department will not require reviewers' identities as part of the certification application process, but may examine identified information about reviewers as part of enforcement activities.

(8) An IRO shall promptly report any attempt at interference by any party, including a state agency, to the department.

(9) An IRO shall have a medical director who holds a current unrestricted license as a medical doctor or osteopathic physician and has had experience in direct patient care. The medical director shall provide guidance for clinical aspects of the independent review process and oversee the IRO's quality assurance and credentialing programs.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-080 Application for certification as an ~~(independent review organization)~~ IRO. (1) To be certified as an ~~(independent review organization)~~ IRO under this chapter, an organization ~~(must)~~ shall submit to the department an application ~~((it))~~ on the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

(i) A carrier;

(ii) A utilization review agent;

(iii) A nonprofit or for-profit health corporation;

(iv) A health care provider;

(v) A drug or device manufacturer; or

(d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that the applicant anticipates will be derived from reviews conducted under RCW 48.43.535;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant, as well as the IRO's policies and standards addressing qualifications, training, and assignment of all types of reviewers;

(g) The procedures that the ~~(independent review organization)~~ IRO will use in making review determinations regarding reviews conducted under RCW 48.43.535;

(h) Attestations that all requirements will be met;

(i) Evidence of ~~((accreditations, certifications, and government IRO contracts that the applicant believes demonstrate compliance with certain requirements of this chapter))~~ current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process.

(i) Applicants ~~(must)~~ shall authorize release of information from primary sources, including full reports of site visits, inspections, and audits;

(ii) The department may require the applicant to indicate which documents demonstrate compliance with specific Washington state certification requirements under this chapter.

(j) Other documentation, including, but not limited to, legal and financial information, policies and procedures, and data that are pertinent to requirements of this chapter; and

(k) Any other reasonable application requirements demonstrating ability to meet all requirements for certification in Washington state.

(2) Department investigation and verification activities regarding the applicant may include, but are not limited to:

(a) Review of application and filings for completeness and compliance with standards;

(b) On-site survey or examination;

(c) Primary-source verification with accreditation or regulatory bodies of compliance with requirements which are used to demonstrate compliance with certain standards in this chapter;

(d) Other means of determining regulatory and accreditation histories; and

(e) Exercising any power of the department under WAC 246-305-100.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-090 Ongoing requirements for ~~(independent review organizations)~~ IROs. A certified IRO shall:

(1) Comply with the provisions of RCW 43.70.235, 48.43.535(5), and this chapter;

(2) Cooperate with the department during investigations;

(3) Provide the department with information requested in a prompt manner;

(4) Conduct annual self-assessments of compliance with Washington certification requirements;

(5) ~~((File))~~ Submit an annual statistical report with the department on a form specified by the department summarizing reviews conducted. The report shall include, but may not be limited to, volumes, types of cases, compliance with timelines for expedited and nonexpedited cases, determinations, number and nature of complaints, and compliance with the conflict of interest~~((s-rules))~~ requirements described in WAC 246-305-030.

(6) Submit updated information to the department if at any time there is a material change in the information included in the application.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-100 Powers of the department. (1) The department may deny, suspend, revoke, or modify certification of an IRO if the department has reason to believe the applicant, certified IRO, its agents, officers, directors, or any person with any interest ~~((therein))~~ in the IRO has failed or refused to comply with the requirements established under this chapter.

(2) The department may conduct an on-site review, audit, and examine records to investigate complaints alleging that an applicant, certified IRO, or reviewer committed any conduct described in WAC 246-305-110.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-110 Grounds for action against an applicant or a certified IRO. (1) The department may deny an application for certification, or suspend, revoke, or modify

certification if the applicant, certified IRO, its agents, officers, directors, or any person with any interest (~~(therein)~~):

(a) Knowingly or with reason to know makes a misrepresentation of, false statement of, or fails to disclose, a material fact to the department. This applies to any data attached to any record requested or required by the department or matter under investigation or in a (~~(self-inspection)~~) self-assessment;

(b) Obtains or attempts to obtain certification by fraudulent means or misrepresentation;

(c) Fails or refuses to comply with the requirements of RCW 43.70.235, 48.43.535(5), or this chapter;

(d) Conducts business or advertising in a misleading or fraudulent manner;

(e) Refuses to allow the department access to records, or fails to promptly produce for inspection any book, record, document, or item requested by the department, or willfully interferes with an investigation;

(f) Accepts referral of cases from the insurance commissioner under RCW 48.43.535 without certification, or with certification which has been terminated, or is subject to sanction;

(g) Was the holder of a license, certification, or contract issued by the department or by any competent authority in any state, federal, or foreign jurisdiction that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(h) Had accreditation from a recognized national or state IRO accrediting body that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(i) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes, but is not limited to: Willful misrepresentation of facts during an investigation, or administrative proceeding, or any other legal action; or use of threats or harassment against any patient, client, customer, or witness(;;), or use of financial inducements to any patient, client, customer, or witness to prevent or attempt to prevent him or her from providing evidence during an investigation, in an administrative proceeding, or any other legal action involving the department;

(j) Willfully prevents or interferes with any department representative in the preservation of evidence;

(k) Misrepresented or was fraudulent in any aspect of the conduct of business;

(l) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an IRO;

(m) Violates any state or federal statute, or administrative rule regulating the IRO;

(n) Fails to comply with an order issued by the secretary of the department of health or designee;

(o) Uses interference, coercion, discrimination, reprisal, or retaliation against a patient, client, or customer exercising his or her rights;

(p) Offers, gives, or promises anything of value or benefit to any federal, state, or local employee or official for the

purpose of influencing that employee or official to circumvent federal, state, or local laws, regulations, or ordinances governing the certification holder or applicant;

(2) A person, including, but not limited to, enrollees, carriers, and providers, may submit a written complaint to the department alleging that a certified IRO committed conduct described in this section.

(3) An applicant or certified IRO may contest a department decision or action according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

AMENDATORY SECTION (Amending WSR 05-24-029, filed 11/30/05, effective 12/31/05)

WAC 246-305-990 Maximum fee schedule. This section sets the maximum fee schedule for independent reviews, and the process of review and determination of a case referred to an independent review organization (IRO).

(1) IROs may not charge more than the following amount for each review:

Category	Amount
Contract review, interpretation of health plan coverage provisions	\$600
Standard medical review, straightforward review of medical necessity or adverse determination	\$700
Highly specialized medical review of complex conditions or experimental <u>or investigational</u> treatment	\$1000
Medical review with multiple reviewers	\$1100
Surcharge for expedited review	\$200

The fees in this section include all costs for time and materials associated with the review including, but not limited to:

(a) Record transmission expenses such as postage and facsimile costs; and

(b) Medical record handling and duplication.

(2) If the IRO and the health care plan agree in advance that the referral includes both a contract review and a medical review, the IRO may charge both fees.

(3) If an IRO charges more than the maximum fees allowed under this section, the department may take action as described in WAC 246-305-110.

**WSR 11-16-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-176—Filed July 29, 2011, 1:47 p.m., effective July 29, 2011, 1:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Federal regulations allow the northern nearshore halibut fishery to remain open until the quota is taken, or September 30, whichever occurs first. There is sufficient halibut quota remaining in Marine Area 2 to allow the fishery to remain open through July 31, 2011. This rule conforms to federal action taken by the National Marine Fisheries Service and approved by the International Pacific Halibut Commission. 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 29, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500J Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open August 5, 2011, until further notice, Fridays through Sundays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2**

(i) Primary season - Closed.

(ii) Northern Nearshore fishery - Open through July 31, 2011, in those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates: open seven days per week until further notice.

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

46° 58.00 N. lat, 124° 24.24 W. long

(3) **Catch Record Card Areas 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13** - Closed.

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

(5) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500I Halibut—Seasons—Daily and possession limits. (11-166)

**WSR 11-16-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-177—Filed July 29, 2011, 3:02 p.m., effective August 1, 2011]

Effective Date of Rule: August 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 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: This section of Salmon Creek has been designated as a recovery stream for Endangered Species Act listed steelhead. Competition and predation by nonnative species such as brook trout and smallmouth bass is hindering those recovery efforts. 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 Mak-

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

Date Adopted: July 29, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Salmon Creek (Okanogan Co.) Notwithstanding the provisions of WAC 232-28-619, effective August 1 through October 31, 2011, it is permissible to fish for Smallmouth bass and Eastern brook trout in waters of Salmon Creek from the mouth to Conconcully Reservoir Dam. No size restrictions and daily limit 10. Release all other trout, salmon and steelhead. Selective gear rules in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2011:

WAC 232-28-61900I Exceptions to statewide rules—Salmon Creek (Okanogan Co.)

WSR 11-16-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-179—Filed July 29, 2011, 4:39 p.m., effective August 1, 2011, 6:00 a.m.]

Effective Date of Rule: August 1, 2011, 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 220-32-05700C; and amending WAC 220-32-057.

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

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

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Adopts a sturgeon set line commercial treaty fishery in Zone 6 (SMCRA 1F, 1G, 1H). Allow sales only of sturgeon, (including platform and hook and line). Sturgeon remain available for harvest based on the 2011 sturgeon guidelines. Conforms state rules to tribal rules. Consistent with compact action of July 28, 2011. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969).

The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 29, 2011.

James B. Scott, Jr.
for Philip Anderson
Director

WSR 11-16-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-178—Filed July 29, 2011, 4:46 p.m., effective August 1, 2011]

NEW SECTION

WAC 220-32-05700C Columbia River sturgeon seasons above Bonneville Dam Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except that those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

1. **Open period:** 6:00 a.m. August 1 through 6:00 p.m. August 13, 2011.
2. **Area:** 1F, 1G, 1H
3. **Gear:** Setlines. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.
4. **Allowable Sales:** Sturgeon caught in SMCRA 1G and 1H that are between 43 and 54 inches in fork length and 38-54 inches in fork length caught in SMCRA 1F may be sold. Sturgeon within the size limits stated above, and caught in platform and hook and line fishery may be sold if caught during the open periods of the set line fishery.
5. **Sanctuaries:** Standard sanctuaries applicable to these gear types.
6. **Additional Regulations:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.
7. **Miscellaneous:** It is unlawful to sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter RCW 75.28, or to sell or barter sturgeon eggs at retail. It is unlawful to deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. August 13, 2011:

WAC 220-32-05700C Columbia River sturgeon seasons above Bonneville.

Effective Date of Rule: August 1, 2011.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A large number of net pen reared triploid rainbow trout raised at upstream facilities on Rufus Woods Reservoir have recently escaped downstream into the Wells Pool area below Chief Joseph Dam. Removal of these fish is necessary to help reduce the incidence of competition and/or predation with juvenile Endangered Species Act listed anadromous species downstream. 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 29, 2011.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective August 1 through August 31, 2011, it is permissible to retain triploid rainbow trout (having an eroded caudal fin) in waters of the Columbia River from Highway 173 Bridge in Brewster to the Highway 17 Bridge in Bridgeport. Daily limit four triploid rainbow trout, minimum size 12 inches in length. All steelhead must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2011:

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

WSR 11-16-075
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-174—Filed August 1, 2011, 11:14 a.m., effective August 1, 2011, 11:14 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-02100B; and amending WAC 220-40-021.

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 emergency rule is needed to implement fisheries developed through the 2011 North of Falcon salmon season setting process. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 1, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-40-02100B Willapa Bay salmon—Summer fishery. Notwithstanding the provisions of WAC 220-40-021, effective immediately through August 15, 2011, it is unlawful to fish for salmon in Willapa Bay for commercial

purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing Periods:

(1) Gill net gear may be used to fish for salmon and white sturgeon only as shown below. All non-legal sturgeon, all steelhead, and all other species, including Chinook, coho, chum and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:	Area:
6:00 a.m. August 8 through	Areas 2M, 2N, 2R, 2T, and
6:00 p.m. August 11, 2011.	2U

Gear:

(2) Gill net gear restrictions - All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gill net to fish for salmon and/or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. This does not supersede the rule for drift gillnet as defined in WAC 220-16-040, where it states a drift gillnet or drift net gear shall be defined as a gillnet of single web construction not anchored, tied, staked, placed or weighted in such a manner that it cannot drift.

(b) Mesh size must not exceed nine inches.

(c) Only one net may be fished at a time; other nets must be properly stored.

(d) All non-legal sturgeon and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2K, 2M, 2N, 2R, 2T, and 2U.

Other:

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) NOAA Fisheries listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Therefore, the retention of green sturgeon is strictly prohibited to protect this federally protected stock.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 16, 2011:

WAC 220-40-02100B Willapa Bay salmon—Summer fishery.

WSR 11-16-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-180—Filed August 2, 2011, 1:40 p.m., effective August 4, 2011,
 9:00 p.m.]

Effective Date of Rule: August 4, 2011, 9:00 p.m.

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

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

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

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

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

Reasons for this Finding: Sets mainstem Columbia River early fall commercial seasons. Sets the 2011 fall season in select area fishing sites. The seasons are consistent with the 2008-2017 interim management agreement, the 2011 non-Indian salmon allocation agreement. Salmon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 28, 2011. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the

2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: August 2, 2011.

Lori Preuss
 for Philip Anderson
 Director

NEW SECTION

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

1. Mainstem Columbia River

a. SEASON: 9:00 p.m. August 4 to 6:00 a.m. August 5, 2011.

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E

c. GEAR: Drift gillnets only. 9-inch minimum mesh size.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

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

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel.

2. Mainstem Columbia River

a. SEASON: 9 PM Tuesday August 16 to 6 AM Wednesday August 17

9 PM Thursday August 18 to 6 AM Friday August 19

9 PM Sunday August 21 to 6 AM Monday August 22

9 PM Tuesday August 23 to 6 AM Wednesday August 24

9 PM Thursday August 25 to 6 AM Friday August 26

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

c. GEAR: Drift gillnets only. 9-inch minimum mesh size.

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

d. SANCTUARIES: Washougal and Sandy Rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 29 through October 28, 2011. Open hours are 7 PM to 7 AM through September 16, and 6 PM to 8 AM thereafter.

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

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

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

d. ALLOWABLE SALES: Salmon.

4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 29 through October 28, 2011. Open 7 PM - 7 AM through September 16, and 4 PM - 8 AM thereafter.

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

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard their boats, gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

d. ALLOWABLE SALES: Salmon

5. Deep River Select Area.

a. SEASON: Monday and Thursday nights from August 15 through August 26, 2011. 7 PM to 9 AM; and Monday, Tuesday, Wednesday and Thursday nights from August 29 through October 28, 2011. 7 PM - 9 AM through September 16, and 4 PM - 9 AM thereafter.

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

c. GEAR: Gill net. Monofilament gear is allowed. 9 3/4-inch maximum from August 15-26, and 6-inch maximum mesh thereafter. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

d. ALLOWABLE SALES: Salmon.

6. Quick Reporting: 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of

each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. August 4, 2011:

WAC 220-33-01000Z Columbia River season below Bonneville. (11-131)

**WSR 11-16-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-181—Filed August 2, 2011, 1:42 p.m., effective August 2, 2011, 1:42 p.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100E; 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 the first three weekly commercial gillnet fishing periods for the 2011 fall season. Continues to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Sales of sturgeon are not allowed unless caught from platform/ hook and line in SMCRA 1F, 1G, 1H concurrent with the mainstem sturgeon setline fishery. Sock-eye sales prohibited. Based on preseason forecasts, adult fall chinook and steelhead are available for treaty Indian harvest. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 10 and July 28, 2011. Con-

forms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 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: August 2, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100F Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye,

bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: 6:00 AM August 22 through 6:00 PM August 25, 2011.

6:00 AM August 30 through 6:00 PM September 2, 2011.

6:00 AM September 6 through 6:00 PM September 9, 2011.

b. Gear: Gill nets only. Minimum mesh size is 8 inches.

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

d. Standard river mouth sanctuaries in effect.

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

a. Season: Immediately until further notice.

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

c. Allowable sale: Chinook, coho, steelhead, shad, yellow perch, bass, carp and catfish. Sturgeon may not be sold unless caught concurrent with the sturgeon setline mainstem fishery and they meet the pool-specific size limits described in this section. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sockeye may be retained for subsistence purposes.

d. Standard river mouth sanctuaries in effect

3. Open Area: Columbia River Tributaries above Bonneville Dam:

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

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat 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.

d. Allowable Sales: Chinook, coho, steelhead, shad, yellow perch, bass, carp and catfish. Sockeye may be retained for subsistence purposes.

4. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately until further notice.

c. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sockeye may be retained for subsistence purposes. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100E	Columbia River salmon seasons above Bonneville Dam. (11-163)
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