

WSR 13-10-020
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed April 23, 2013, 9:28 a.m., effective April 26, 2013]

Effective Date of Rule: April 26, 2013.

Purpose: To amend and add new sections to chapter 388-845 WAC, DDD home and community based services waivers, in order to comply with the requirements of SSB 6384 (related to community access services); to add dental services as a waiver service option; and to align this chapter with amendments to chapter 388-828 WAC for community access services. The program continues working with mental health and other stakeholders to finalize language to reflect the developmental disabilities administration (DDA) home and community based services (HCBS) waivers prior to permanent adoption.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0110, 388-845-0205, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0505, 388-845-0800, 388-845-0820, 388-845-1110, 388-845-1105, 388-845-1150, 388-845-1400, 388-845-1410, 388-845-2110, 388-845-2205, and 388-845-2210.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption and 34.05.350 (1)(c) Emergency rules and amendments.

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: The amendments in this filing were originally adopted by emergency rule on September 1, 2012, in order to add dental care as an additional HCBS waiver service and to modify community access services as required by SSB 6384. Because changes to department rules regarding HCBS waivers need to be coordinated with the Centers for Medicare and Medicaid Services, and because related rules in chapter 388-828 WAC need amendment, these amendments could not be adopted as permanent before the expiration of the previous emergency filing. The department is in the process of adopting these amendments as permanent rules and continues stakeholder work to ensure rule appropriately reflects DDA HCBS waivers.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 17, 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 2, Amended 17, Repealed 0.

Date Adopted: April 19, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care or individual support plan.

(2) Mental health stabilization services may be added to your plan of care or individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services (~~(or employment/day program services)~~).

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT((/DAY)) PROGRAM SERVICES: ((Community access)) Person-to-person Prevocational services Supported employment	((May not exceed \$6804 per year)) <u>Limits are determined by DDD assessment and employment status</u>
	<u>DAY PROGRAM SERVICES:</u> <u>Community access</u>	<u>Limits are determined by DDD assessment</u>
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by the DDD assessment
	Personal care	Limits are determined by the CARE tool used as part of the DDD assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services	Limits are determined by a mental health professional or DDD

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Skilled nursing Specialized psychiatric services	
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT((/DAY)) PROGRAM SERVICES: ((Community access Person to person)) Prevocational services Supported employment <u>Individual technical assistance</u>	((May not exceed \$9944 per year)) ((This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need)) <u>Limits are determined by DDD assessment and employment status</u>
	<u>DAY PROGRAM SERVICES:</u> <u>Community Access</u>	<u>Limits are determined by DDD assessment</u>

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy	Determined by the plan of care or individual support plan, not to exceed the average cost of an ICF/MR for any combination of services
	Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	<u>Limits determined by DDD assessment and employment status</u>
	Residential habilitation ((Person to person)) <u>Employment Program Services:</u>	
	Prevocational services Supported employment <u>Individual technical assistance</u>	<u>Limits are determined by chapter 182-535 WAC</u>
	<u>Adult dental services</u>	
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing	Limits determined by a mental health professional or DDD

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Specialized psychiatric services	

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> • Behavior management and consultation • Staff/family consultation and training • Environmental accessibility adaptations • Occupational therapy • Physical therapy • Sexual deviancy evaluation • Nurse delegation • Specialized medical equipment / supplies • Specialized psychiatric services • Speech, hearing and language services • Transportation • Assistive technology • Therapeutic equipment and supplies • Specialized nutrition and clothing • Vehicle modifications 	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.
	Personal care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

CIIBS Waiver	Services	Yearly Limit
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	<u>Behavioral health Stabilization services:</u>	<u>Limits determined by mental health specialist</u>
	<u>Behavioral support and consultation</u>	
	<u>Crisis diversion bed services</u>	
	<u>Specialized psychiatric services</u>	

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0505 Who is a qualified provider of behavior (~~(management)~~) support and consultation?

Under the Basic, Basic Plus, Core, and Community Protection waivers, the provider of behavior (~~(management)~~) support and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; (~~(or)~~)
- (11) Polygrapher; or
- (12) State operated behavior support agency limited to behavioral health stabilization services.

NEW SECTION

WAC 388-845-0780 What is adult dental services? Adult dental services are provided to individuals age twenty-one years and older. Dental services provide comprehensive dental coverage as defined in chapter 182-535 WAC. Adult dental service coverage is limited to individuals on the Basic Plus, Core and Community Protection waivers.

NEW SECTION

WAC 388-845-0785 Who are qualified providers of adult dental services? Providers for adult dental services covered under the waiver program must have a current state license and have core provider agreement with the state medicaid agency.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0800 What is emergency assistance? Emergency assistance is a temporary increase to the yearly aggregate services and(~~or employment/day program services~~) dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

- (1) Prior approval by the DDD regional administrator or designee is required based on a reassessment of your plan of care or individual support plan to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care or individual support plan;
- (3) Emergency assistance services are limited to the aggregate services (~~(and employment/day program services)~~) in the Basic and Basic Plus waivers;
- (4) Emergency assistance may be used for interim services until:
 - (a) The emergency situation has been resolved; or
 - (b) You are transferred to alternative supports that meet your assessed needs; or
 - (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services? Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per chapter 388-101 WAC; (~~(or)~~)
- (2) Other department licensed or certified agencies; or
- (3) State operated agency.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1110 What are the limits of mental health crisis diversion bed services? (1) Mental health crisis diversion bed services are intermittent and temporary. The

duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in the Basic, CIIBS, Basic Plus, Core, and Community Protection waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1150 What are mental health stabilization services? Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in the Basic, Basic Plus, Core, CIIBS and Community Protection waivers to ~~((adults))~~ individuals determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) Specialized psychiatric services; or
- (3) Mental health crisis diversion bed services.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1400 What are prevocational services? (1) Prevocational services occur in a specialized or segregated settings and include monthly employment related activities in the community. Prevocational services are designed to prepare you for gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1410 Are there limits to the prevocational services I can receive? The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) New referrals for prevocational services require prior approval by the DDD regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual vocational assessment will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

- (a) Compensation at more than fifty percent of the prevailing wage;
- (b) Significant progress made toward your defined goals;

(c) Your expressed interest in competitive employment; and/or

(d) Recommendation by your individual support plan team.

(4) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-2110 Are there limits to the supported employment services I can receive? The following limitations apply to your receipt of supported employment services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.

(2) Payment will be made only for the employment support you require as a result of your disabilities.

(3) Payment for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You will not be authorized to receive supported employment services in addition to community access or prevocational services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235 and might not equal the number of hours you spend on the job or in job related activities.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2205 Who is qualified to provide transportation services? (1) The provider of transportation services can be an individual or agency contracted with DDD.

(2) For adult dental services only, provider can be contracted as a transportation broker through medicaid.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive unless provided by a contracted transportation broker to access adult dental services.

(11) Transportation services require prior approval by the DDD regional administrator or designee, unless provided by transportation broker for adult dental services.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic or Basic Plus waiver.

WSR 13-11-011
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed May 2, 2013, 3:21 p.m., effective May 2, 2013, 3:21 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department of early learning (DEL) is amending sections in DEL child care licensing WAC chapters to update the provision for safe food handling. The department of health (DOH) has recently updated their food handlers guide, and DEL needs to reflect the updated requirements. This filing includes sections of chapter 170-297 WAC, Licensed school-age child care standards and chapter 170-295 WAC, Child care centers.

Citation of Existing Rules Affected by this Order: Amending WAC 170-295-3190 and 170-297-7680.

Statutory Authority for Adoption: Chapter 43.215 RCW.

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

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

Reasons for this Finding: DOH has amended its food handler's guide, and DEL needs to reflect the new requirements for the health and safety of children in licensed child care.

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

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

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

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

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

Date Adopted: May 2, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-3190 How can I be sure that the food I serve is safe? ~~((1) You need to develop and implement a system to monitor the temperature of potentially hazardous foods during cooking, reheating, cooling, storing, and hot and cold holding temperatures to be sure that:~~

~~(a) Food will be cooked to at least the minimum correct internal temperature:~~

~~(i) Ground beef and pork sausage 155 degrees Fahrenheit;~~

~~(ii) Pork 150 degrees Fahrenheit;~~

~~(iii) Fish and seafood 140 degrees Fahrenheit;~~

~~(iv) Poultry and stuffing 165 degrees Fahrenheit;~~

~~(v) Eggs 140 degrees Fahrenheit;~~

~~(vi) Beef (not ground) and lamb 140 degrees Fahrenheit.~~

~~(b) Previously prepared food is reheated one time only to an internal temperature of 165 degrees Fahrenheit within sixty minutes;~~

~~(c) Hot food is kept at a temperature of 140 degrees Fahrenheit or above until served;~~

~~(d) Cold food is kept at a temperature of 45 degrees Fahrenheit or less;~~

~~(e) Refrigerators have a thermometer in or near the door and are kept at 45 degrees Fahrenheit or less; and~~

~~(f) Freezers have a thermometer in or near the door and are kept at 10 degrees Fahrenheit or less.)~~ (1) Program staff must follow the safe preparation, cooking, and serving guidelines in the current edition of the food workers manual prepared by the state department of health.

(2) You must develop a system to record the temperature of each perishable food once it arrives from a satellite kitchen

or a catering service. The system must include keeping records on site for six months with the following information:

- (a) The name and the temperature of the food;
- (b) The date and time the temperature was checked; and
- (c) The name and signature or recognized initials of the person who is checking and recording the food temperatures.

(3) You may serve previously prepared food that has not been previously served if it was stored at the proper temperature for less than forty-eight hours after preparation. Leftover foods or open foods in the refrigerator must be labeled with the date that they were opened or cooked.

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-7680 Safe food handling. (1) Program staff must follow the safe preparation, cooking, and serving guidelines in the current edition of the food workers manual prepared by the state department of health.

~~((a)) Food must be served at temperatures of not less than one hundred thirty-five degrees Fahrenheit for hot foods and not more than forty-one degrees Fahrenheit for cold foods.~~

~~(b) All opened moist foods that have not been served must be covered, dated, and maintained at a temperature of forty-one degrees Fahrenheit or lower in the refrigerator or frozen in the freezer.~~

~~(c) Raw animal foods must be fully cooked to heat all parts of the food to a temperature and for a time of:~~

~~(i) One hundred forty-five degrees Fahrenheit or above for fifteen seconds for fish and meat;~~

~~(ii) One hundred sixty degrees Fahrenheit for fifteen seconds for chopped or ground fish, chopped or ground meat or raw eggs; or~~

~~(iii) One hundred sixty-five degrees Fahrenheit or above for fifteen seconds for poultry or stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish meat or poultry.~~

~~(d) Potentially hazardous cooked foods must be cooled in an uncovered container, protected from cross-contamination, and in a shallow layer of three inches or less in cooling equipment maintained at an ambient temperature of forty-one degrees Fahrenheit or less.~~

~~(2) Program staff must:~~

~~(a) Wash their hands prior to preparing food and after handling raw meats, poultry, or fish; and~~

~~(b) Not prepare food when ill with vomiting, diarrhea or infectious skin sores that cannot be covered.~~

~~(3)) (2) Previously prepared food may be served if:~~

~~(a) The food was not previously served; and~~

~~(b) It was stored at the proper temperature for less than twenty-four hours after preparation.~~

~~((4)) (3) Leftover foods or opened foods in the refrigerator must be labeled with the date that they were opened or cooked.~~

~~((5)) (4) Each staff person preparing or handling food must maintain a current Washington state department of health food worker's permit.~~

WSR 13-11-012

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed May 3, 2013, 10:38 a.m., effective May 3, 2013, 10:38 a.m.]

Effective Date of Rule: Immediately.

Purpose: In response to a court-approved settlement agreement, the agency is adopting WAC 182-531-1410 concerning coverage for applied behavioral analysis (ABA) services for children with autism spectrum disorders. The new rules address prior authorization for services, evaluating and prescribing provider requirements, ABA provider requirements, and payment.

Statutory Authority for Adoption: RCW 41.05.021.

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 agency has been working with stakeholders and experts in autism spectrum disorders to craft rules to ensure public health and safety; however, the agency must file an emergency WAC for the short term to meet the agreed upon January 2, 2013, deadline.

The agency is proceeding with the permanent rule adoption process initiated by the CR-101 filed under WSR 12-14-100. The agency is currently preparing a draft for the permanent rule to share with stakeholders for their input. The agency anticipates filing the CR-102 sometime in May 2013.

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

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

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

Date Adopted: May 3, 2013.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-531-1410 Applied behavior analysis (ABA). (1) Applied behavior analysis (ABA) assists children with autism spectrum disorders and their families to improve the core symptoms associated with autism spectrum disorders.

(2) The agency pays for ABA services when the services:

- (a) Are covered;
- (b) Are medically necessary;

(c) Are within the scope of the eligible client's medical care program;

(d) Are within currently accepted standards of evidence-based medical practice;

(e) Do not replicate ABA services being rendered in other settings;

(f) Are authorized, as required within this section, chapters 182-501 and 182-502 WAC, and the agency's applicable, published medicaid provider guides; and

(g) Are billed according to this section, chapters 182-501 and 182-502 WAC, and the agency's applicable, published medicaid provider guides.

(3) **Definitions.** The following definitions and those found in chapter 182-500 WAC, medical assistance definitions, and this chapter, physician-related services, apply to this section.

ABA treatment plan - An individualized, goal-directed treatment plan developed by a lead behavior analysis therapist meeting the criteria in subsection (15)(a)(i)(A) of this section.

Applied behavior analysis or **ABA** - Applied behavior analysis (ABA) involves the systematic application of scientifically validated principles of human behavior to change socially significant behaviors. Behavior analysis uses scientific methodology to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods include: Behavioral assessment consisting of caregiver interviews, direct observation, and collection of data on targeted behaviors; use of single-case design to demonstrate the relationship between the environment and behavior as a means to promote lasting change; and implementation of client-specific plans and goals. ABA is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA also includes the implementation of functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behavior.

Autism - A diagnosis along the autism spectrum disorder as defined by the most current DSM criteria and made by a licensed health care professional who is associated with an agency-recognized center of excellence (COE).

Autism diagnostic tool - A tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and the development of a treatment plan. Examples of autism diagnostic tools include:

(a) Autism diagnosis interview (ADI); and

(b) Autism diagnostic observation schedule (ADOS).

Autism screening tool - A tool used to detect indicators or risk factors for autism and may indicate a suspicion of the condition which would then require confirmation. Examples of screening tools include:

(a) Ages and stages questionnaire (ASQ);

(b) Communication and symbolic behavior scales (CSBS);

(c) Parent's evaluation and developmental status (PEDS);

(d) Modified checklist for autism in toddlers (MCHAT); and

(e) Screening tools for autism in toddlers and young children (STAT).

Centers of excellence or **COE** - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

Comprehensive evaluation diagnostic assessment - An evaluation and assessment meeting the criteria in subsection (8) of this section.

Day services program - An agency approved, structured, nonresidential, facility-based group program designed to meet the needs of enrolled children with autism and developmental disabilities through individualized plans of care. The program is comprehensive, providing a variety of health, social, therapeutic activities (occupational, speech, and physical therapy), supervision, support, and in some cases personal care. These services support learning and assistance in any of the following areas: Self-care, receptive and expressive language, learning, mobility, and self-direction.

Diagnostic and statistical manual of mental disorders (DSM) - A manual published by the American Psychiatric Association that provides a common language and standard criteria for the classification of mental disorders.

Lead behavior analysis therapist or **LBAT** - A person meeting the qualifications for lead behavior analysis therapist (LBAT) as described in subsection (15)(a) of this section and having sufficient competency to complete an individualized ABA treatment plan and oversee its implementation.

Therapy assistant - A person meeting the qualifications for therapy assistants as described in subsection (15)(a)(ii)(A) of this section and having sufficient competence to perform the tasks of a therapy assistant as described in subsection (15)(a)(ii)(B) of this section.

(4) The agency covers ABA services when the following requirements are met:

(a) Client eligibility, as described in subsection (5) of this section;

(b) Completion of stages, as described in subsections (7) through (13) of this section; and

(c) Provider requirements, as described in subsections (14) and (15) of this section.

(5) **Eligibility.** To be eligible for ABA services, clients must meet all of the following:

(a) Program eligibility:

(i) Be twenty years of age and younger;

(ii) Be covered under one of the following agency programs:

(A) Children's health care programs as defined in WAC 182-505-0210, Apple health for kids and other children's medical assistance programs;

(B) Categorically needy program (CNP); or

(C) Medically needy program (MNP); and

(iii) Be younger than eighteen years of age and younger and covered under the agency's medical care services as described in WAC 182-505-0210 (within Washington state or bordering city only, as described in WAC 182-501-0175).

(b) Clinical eligibility:

(i) The client may be screened using a valid autism screening tool;

(ii) The client's health care record contains documentation by a clinician which may incorporate family member observations, establishing the presence of any of the core symptoms of autism: Functional impairment; delay in communication, behavior, and/or social interaction; or repetitive or stereotyped behavior;

(iii) There is documentation by a clinician which may incorporate family member observations, that the client's behaviors are having an adverse impact on either development or communication, or both, such that:

(A) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit(s) interferes with these activities; or

(B) The child exhibits behavior in the nature of self-injury, aggression towards others, destruction of property, stereotyped/repetitive behaviors, elopement, or severe disruptive behavior, where the behavior may be construed that the physical health or safety of the person or others may be placed in serious jeopardy; and

(iv) The agency's recognized center of excellence (COE) has confirmed:

(A) The client has a diagnosis on the autism spectrum disorder, as defined by the most current DSM version;

(B) Either of the following:

(I) That less intrusive or less intensive behavioral interventions have been tried and have not been successful; or

(II) There is no equally effective and substantially less costly alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors; and

(C) There is a reasonable expectation that the requested services will result in measurable improvement in either the client's behavior, skills, or both.

(6) The following stages must be completed:

(a) Stage one - Referral to a COE for evaluation, treatment plan, and order/prescription;

(b) Stage two - ABA assessment and treatment plan; and

(c) Stage three - Delivery of ABA services with agency's authorization.

Stage one - Referral to a COE for evaluation and order

(7) A client who may meet the eligibility criteria in subsection (5) of this section may be referred to a COE for an evaluation and treatment plan by:

(a) The primary care provider or other licensed health care practitioner including, but not limited to, a speech therapist or occupational therapist;

(b) A school-based health care professional as the result of an individual education plan (IEP);

(c) The client's parent or guardian; or

(d) As required by their managed care plan coverage, if indicated.

(8) The COE must provide a comprehensive evaluation and treatment plan that includes:

(a) Routine developmental surveillance performed by providers at well child visits, as available;

(b) Audiology and vision assessment results, as available, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism screening questionnaire, including date completed and significant results, as available;

(d) Documentation of how diagnosis was confirmed by COE physician or psychologist:

(i) Results of formal diagnostic procedures performed by an experienced clinician, including name of measure, dates, and results, as available; or

(ii) Clinical findings and observations used to confirm diagnosis;

(e) Documentation of a formal cognitive and/or developmental assessment performed by a qualified clinician, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores, as available. Examples of these assessment tools are:

(i) Mullen;

(ii) Weschler; or

(iii) Bayley;

(f) Documentation of a formal adaptive behavior assessment performed by a qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain, as available. Examples of these assessment tools are:

(i) Vineland adaptive behavior scales; or

(ii) Adaptive behavior assessment system (ABAS);

(g) Documentation that the client's behaviors are having an adverse impact on development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit(s) interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(h) Expanded laboratory evaluation, if indicated;

(i) Documentation that:

(i) Less intrusive or less intensive behavioral interventions have been tried and not been successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors, if ABA is included in the plan;

(j) A multidisciplinary individualized treatment plan (ITP) with recommendations that consider the full range of autism treatments with ABA as a treatment component, if clinically indicated;

(k) A statement that the evaluating and prescribing provider expects that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(l) An order/prescription for ABA services. If ordered/prescribed, a copy of the comprehensive evaluation and treatment plan must be forwarded to the family selected ABA provider in subsection (15) of this section or provided to the parent to forward to the selected ABA provider.

Stage two - ABA assessment and plan development

(9) If the COE's evaluating and prescribing provider orders ABA services, the client may begin stage two - ABA assessment and treatment plan development.

(10) ABA services are rendered in one of the following settings. Prior authorization is required by the agency prior to providing any direct care services:

(a) Day services program - Available to children two to five years of age. This is an agency-approved, outpatient facility or clinic-based program that:

(i) Provides multidisciplinary services in a short-term day treatment program setting;

(ii) Delivers comprehensive intensive services;

(iii) Embeds early, intensive behavioral interventions in developmentally appropriate context;

(iv) Provides individualized treatment;

(v) Includes family support and training; and

(vi) Includes multidisciplinary team members as clinically indicated to include an applied behavioral therapist, occupational therapist, speech therapist, physical therapist, psychologist, and dietitians.

(b) Home, office, and community-based program (i.e., natural setting) - Available to all clients twenty years of age and younger. This is a program that:

(i) May be used after discharge from a day services program (see (a) of this subsection);

(ii) Provides an individualized, developmentally appropriate ABA treatment plan developed for each child;

(iii) Provides ABA services in the home, office, or community setting, as required to accomplish the treatment plan. Examples of community-based services are: The park, restaurant, or school and must be included in the ABA treatment plan with services being provided by the medicaid-enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family support and training.

(11) After the client and family select the setting in which to receive services, a functional assessment must be conducted and an individualized ABA treatment plan developed by an LBAT in the chosen setting. The ABA treatment plan must follow the agency's ABA treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be time-limited (e.g., three months) and based on the comprehensive evaluation (see subsection (8) of this section) that took place no more than twelve months before the functional assessment;

(c) Address the behaviors, skill deficit(s), and symptoms that prevent the client from adequately participating in home, school, community activities, or present a safety risk to self or others;

(d) Be specific and individualized to the client;

(e) Be multidisciplinary in nature, client-centered, family-focused, community based, culturally competent and minimally intrusive;

(f) Take into account all school or other community resources available to the client, provide evidence that the

requested services are not redundant to other services already being provided or otherwise available, and coordinate therapies (e.g., from school and special education) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, including documentation of the number of service hours, in terms of frequency and duration for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in a three- to six-month treatment period;

(l) Incorporate strategies for generalized learning skills;

(m) Integrate family education, goals, training, and support services;

(n) Incorporate strategies for coordinating treatment with school-based special education programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

Stage three - Delivery of ABA services

(12) The agency requires prior authorization of ABA services prior to delivery. The LBAT must submit the comprehensive evaluation and treatment plan from the COE described in subsection (8) of this section and the ABA treatment plan described in subsection (11) of this section to the agency as described in WAC 182-501-0163 and other documents required as described in the agency's medicaid provider guides.

(13) After the individual ABA treatment plan is developed by an LBAT, the ABA treatment plan is implemented by the LBAT or a therapy assistant. If services are rendered via a therapy assistant, the therapy assistant must:

(a) Assess the client's response to techniques and report that response to the LBAT;

(b) Provide direct on-site services in the client's natural setting found in the home, office, or community;

(c) Be supervised by a licensed behavior analysis therapist for a minimum of five percent of total direct care per week (e.g., one hour per twenty hours of care);

(d) Consult with the LBAT when considering modification to technique, when barriers and challenges occur that prohibit implementation of plan, and as otherwise clinically indicated;

(e) Assure family involvement and training to support generalization and maintenance of achieved behaviors;

(f) Keep documentation of daily visits with the client and family to include targeted behavior, interventions, response,

modifications in techniques, and plan for next visit along with behavior tracking sheets that record and graph data collected for each visit; and

(g) Keep documentation of parent or guardian's confirmation that visit occurred recording signature and date.

Provider requirements

(14) **Stage one.** The COE's evaluating and prescribing providers must function as a multidisciplinary team whether facility-based or practitioner-based.

(a) The qualifications for a center of excellence are:

(i) The entity or individual employs:

(A) A person or persons licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and has a specialty in one of the following:

(I) Neurology;

(II) Pediatric neurology;

(III) Developmental pediatrics;

(IV) Psychology;

(V) Pediatric psychiatry; or

(VI) Psychiatry; and

(B) A licensed midlevel practitioner (i.e., advanced registered nurse practitioner (ARNP) or physician assistant (PA)) who works under the tutelage of one of the specialists in (a)(i)(A) of this subsection and meets the qualifications in (a)(ii) of this subsection;

(ii) The entity or individual has been prequalified by the medicaid agency as meeting or employing persons meeting the following criteria:

(A) For physicians or psychologists only, have sufficient expertise to diagnose or confirm the diagnosis of autism spectrum disorder using a validated diagnostic tool or through observation of client's behavior, review of documentation available from client's primary care provider, child's individualized education plan (IEP), and interview of family members;

(B) Have sufficient experience in or knowledge of the medically necessary use of ABA; and

(C) Are sufficiently qualified to conduct and document both a comprehensive evaluation diagnostic assessment, and a treatment plan as described in subsection (12)(d) of this section; and

(iii) The entity or individual has a core provider agreement (CPA) with the agency or is a performing provider on an approved CPA with the agency.

(b) Examples of providers who can qualify and be paid for these services as a designated COE are:

(i) Multidisciplinary clinics;

(ii) Individual physician offices; and

(iii) Neurodevelopment centers.

(15) **Stages two and three.** Regardless of the service delivery option, ABA providers must meet the specified minimum qualifications and comply with applicable state laws:

(a) LBAT.

(i) Requirements.

(A) The LBAT must be:

(I) Able to practice independently by being licensed by the department of health (DOH) as a physician, psychologist,

or mental health professional under Title 18 RCW in good standing with no license restrictions;

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed under DOH as a hospital, a mental health facility, a home health agency, or an in-home agency with certification by DOH to provide ABA services, and be able to practice independently by being licensed by DOH as a physician, psychologist, mental health professional, or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(III) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in WAC 388-865-0469 (5)(a);

(B) The LBAT must:

(I) Enroll as a performing/servicing provider and be authorized to supervise ancillary providers; and

(II) Provide proof of board certification as an applied behavior analyst; or

(III) Have two hundred forty hours of course work related to behavior analysis and seven hundred fifty hours of supervised experience, or two years of practical experience in designing and implementing comprehensive ABA treatment plans.

(ii) Role. The LBAT must:

(A) Develop and maintain a comprehensive ABA treatment plan; and

(B) Supervise a minimum of five percent of the total direct care provided by the therapist assistant per week (e.g., one hour per twenty hours of care).

(b) Therapist assistant.

(i) Requirements.

(A) Therapy assistants must be:

(I) Able to practice independently by being licensed by DOH as a mental health professional or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions;

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed under DOH as a hospital, a mental health facility, a home health agency, or an in-home agency with certification by DOH to provide ABA services, and be able to practice independently by being licensed by DOH as a mental health professional or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(III) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in WAC 388-865-0469 (5)(a);

(B) The therapist assistant must:

(I) Have sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a child with core symptoms with autism;

(II) Have a written letter of attestation signed by the lead LBAT that the therapist assistant has demonstrated compliance in implementing ABA treatment plans and delivering

ABA services prior to providing services to covered clients; and

(III) Enroll as a providing/servicing provider.

(C) Role. The therapist assistant must:

(I) Deliver services according to the ABA treatment plan;

(II) Be supervised by an LBAT who meets the requirements in (a)(i) of this subsection; and

(III) Obtain approval and review of the ABA treatment plan every two weeks and review progress with the LBAT.

(c) Licensure for facility-based day program setting. This applies to the model described in subsection (10)(a) of this section. Outpatient hospital facilities providing these services must meet the applicable DOH licensure requirements. Providers rendering direct ABA services must meet the applicable licensure or certification requirements as described in this subsection and meet the qualifications described in this subsection, as applicable. Other providers serving as members of the multidisciplinary care team must be licensed under Title 18 RCW, as required.

(16) Prior authorization and recertification of ABA services.

(a) The agency requires prior authorization and recertification of the medical necessity of ABA services.

(b) Requirements for prior authorization requests are described in subsection (13) of this section.

(c) The following are requirements for recertification of ABA services:

(i) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(ii) The LBAT must request authorization of continuation of services three weeks prior to the expiration date of the current authorization. A reevaluation and revised ABA treatment plan which documents the client's progress showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA treatment plan must be submitted with this request. Documentation must include:

(A) Projection of eventual outcome;

(B) Assessment instruments;

(C) Developmental markers of readiness; and

(D) Evidence of coordination with providers; and

(iii) In deciding whether to authorize continued ABA services, the agency may obtain the evaluating and prescribing COE provider's review and recommendation. This COE provider must review the ABA treatment date, conduct a face-to-face visit, facilitate a multidisciplinary record review of the client's progress, hold a parent conference, or request a second opinion before recommending continued ABA services.

(d) Basis for denial of services includes, but is not limited to, the following:

(i) Lack of medical necessity;

(ii) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable;

(iii) There are no meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family disruption, change of resi-

dence, etc.), if applicable. For changes to be meaningful they must be:

(A) Confirmed through data;

(B) Documented in charts and graphs;

(C) Durable over time beyond the end of the actual treatment session; and

(D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; and

(iv) Noncompliance (e.g., failure to keep appointments, failure for parents to attend all treatment sessions, failure for parents to attend scheduled parent training sessions, etc.), if applicable.

(17) Coverage.

(a) The agency covers only the following ABA services delivered in settings described in stage three, as noted in subsections (9) and (10) of this section, for eligible clients:

(i) The ABA assessments to determine the relationship between environmental events and behaviors;

(ii) The direct provision of ABA services by the therapy assistant or LBAT;

(iii) Development of a written, initial ABA treatment plan, limited to one per year;

(iv) Revision of the treatment plan to meet client's needs, limited to four per year;

(v) Supervision of the therapy assistant;

(vi) Training of family members, caregivers, or others to carry out the approved ABA treatment plans;

(vii) Observation of caregiver (or other plan implementer) and individual's behavior to assure correct implementation of the approved ABA treatment plan;

(viii) Observation of client's behavior to determine effectiveness of the approved ABA treatment plan; and

(ix) On-site assistance in a difficult or crisis situation.

(b) The agency covers the following services which may be provided in conjunction with ABA services under other agency programs:

(i) Speech and language therapy;

(ii) Occupational therapy;

(iii) Physical therapy;

(iv) Auditory and sensory therapy; and

(v) Counseling.

(c) The agency does not authorize ABA services if the services are duplicative of services being rendered in another setting.

(d) The agency does not cover the following services including, but not limited to:

(i) Dolphin therapy;

(ii) Equine therapy;

(iii) Hippo therapy;

(iv) Language development training;

(v) Primarily educational services;

(vi) Recreational therapy;

(vii) Respite care;

(viii) Safety monitoring services;

(ix) School-based services;

(x) Social skills training;

(xi) Vocational rehabilitation;

(xii) Life coaching; and

(xiii) Treatment that is unproven or investigational (e.g., holding therapy, Higashi (day life therapy), auditory integration therapy, etc.)).

(18) Limits in amount or frequency of the covered services described in this section are subject to the provisions in WAC 182-501-0169, limitation extension.

WSR 13-11-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-89—Filed May 3, 2013, 1:41 p.m., effective May 7, 2013, 12:01 a.m.]

Effective Date of Rule: May 7, 2013, 12:01 a.m.

Purpose: Amend recreational 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: This rule change is necessary to ensure safe and successful youth fishing events. Several thousand rainbow trout will be stocked three days prior to the events to acclimate them to ensure they will bite while the kids are fishing. During the two events, only registered kids will be allowed to fish. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 3, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules—Columbia Park Pond. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 7, through 3:00 p.m. May 11, 2013, it is unlawful to fish in Columbia Park Pond, except as provided in the sections below:

(a) Open to fishing 4:00 p.m. to 7:00 p.m. May 10, 2013, by participants in the Special Needs Kids Fishing Event.

(b) Open to fishing 8:00 a.m. to 3:00 p.m. May 11, 2013, by juvenile anglers participating in the Kids Fishing Day Event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. May 11, 2013:

WAC 232-28-61900J	Exceptions to statewide rules—Columbia Park Pond.
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WSR 13-11-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-90—Filed May 6, 2013, 12:07 p.m., effective May 8, 2013, 12:01 a.m.]

Effective Date of Rule: May 8, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1 and 3. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 6, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000W Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 a.m. May 10 through 11:59 a.m. May 11, 2013, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. May 8 through 11:59 a.m. May 14, 2013, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

3. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 14, 2013:

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

**WSR 13-11-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-92—Filed May 8, 2013, 2:03 p.m., effective May 17, 2013, 12:01 a.m.]

Effective Date of Rule: May 17, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule change is necessary to ensure a safe and successful event. The reason for closing the lake is to ensure safety for the public as well as the event participants. There is expected to be over six hundred people

participating in the safety day program. Boats will be used for teaching safety classes to kids and adults. Closing the lake will alleviate any boat traffic from anglers. 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: May 8, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Kress Lake (Cowlitz Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 17 through 6:00 p.m. May 18, 2013, it is unlawful to fish in those waters of Kress Lake, except open to fishing 10:00 a.m. through 3:00 p.m. May 18, 2013, to juvenile anglers participating in the fishing event and Safety Day program.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. May 18, 2012:

WAC 232-28-61900L Exceptions to statewide rules—Kress Lake (Cowlitz Co.)

**WSR 13-11-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-93—Filed May 9, 2013, 2:17 p.m., effective May 15, 2013]

Effective Date of Rule: May 15, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M; 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: Yakama Nation (YN) and Washington department of fish and wildlife fishery managers are forecasting a harvestable return of adult hatchery spring chinook to the Yakima River in 2013. Opening the two sections of the Yakima River for spring chinook will provide additional fishing 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: May 9, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 15 through June 30, 2013, a person may fish for salmon in waters of the Yakima River from the Interstate 182 bridge in Richland (river mile 4.5) to the Grant Avenue Bridge in Prosser (river mile 47.0) approximately 1,000 feet downstream of Prosser Dam. Daily limit of two hatchery Chinook, minimum size 12 inches in length. Terminal gear is restricted to one, single (point), barbless hook with a hook gap from point to shank of 3/4 inch or less when fishing for salmon. Use of bait is allowed.

(2) Effective May 18 through July 15, 2013, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap (river mile 107.1) to the BNSF railroad bridge approximately 500 feet downstream of Roza Dam (river mile 127.8). Daily limit of two hatchery Chinook, minimum size 12 inches in length. Only one, single (point), barbless hook with a hook gap from point to shank of 3/4 inch or less is permitted. During the salmon fishery, the Selective Gear Rules requirement prohibiting use of bait and knotted nets is temporarily suspended for all species, but only in the river section open to salmon fishing. Night closure in effect.

(3) The upper "closed water" boundary line for Area 2 is moved upstream to the railroad bridge downstream of Roza Dam.

(4) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery (except for Free Fishing Weekend, June 8-9), in addition to a freshwater fishing license.

(5) In both areas open to salmon fishing, the use of two (2) fishing poles is permitted during the salmon fishery, provided the participating angler has purchased a "Two-Pole Endorsement" (in addition to the freshwater fishing license and Columbia River salmon/steelhead endorsement).

REPEALER

The following section of the Washington Administrative Code is repealed effective July 16, 2013:

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

WSR 13-11-039 EMERGENCY RULES BUILDING CODE COUNCIL

[Filed May 10, 2013, 3:41 p.m., effective May 10, 2013, 3:41 p.m.]

Effective Date of Rule: Immediately.

Purpose: The state building code council adopted new permanent rules related to the Fire Code. The old rule, chapter 51-54 WAC, is being repealed and the new permanent rule will be chapter 51-54A WAC effective July 1, 2013. The purpose of this emergency rule is to continue an exception for certain safety egress markings for existing high rise buildings until the new permanent rule takes effect.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54-4600.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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

Reasons for this Finding: Originally, an error in the model code (2009 International Fire Code) was inadvertently carried over into the state Fire Code in WAC 51-54-4600, and resulted in unintended economic impacts on certain existing high rise building owners. During 2012, the council entered the permanent rule-making process with an effective date of July 1, 2013. The new rule will not require photoluminescent markings in existing high rise buildings. This emergency rule will provide continuity since the language in this rule reflects the same intent as the new 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 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: May 10, 2013.

C. Ray Allshouse
Chair

AMENDATORY SECTION (Amending WSR 12-01-099, filed 12/20/11, effective 4/1/12)

WAC 51-54-4600 Chapter 46—Existing buildings.

CHAPTER 46 CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS

SECTION 4601 GENERAL

4601.1 Scope. The provisions of this chapter shall apply to existing buildings constructed prior to the adoption of this Code.

4601.2 Intent. The intent of this chapter is to provide a minimum degree of fire and life safety to persons occupying buildings by providing for alterations to such existing buildings that do not comply with the minimum requirements of the International Building Code.

4601.3 Permits. Permits shall be required as set forth in Section 105.7 and the International Building Code and this Code.

4601.4 Owner notification. Where a building is found to be in noncompliance, the fire code official shall duly notify the owner of the building. Upon receipt of such notice, the owner shall, subject to the following time limits, take necessary actions to comply with the provisions of this chapter.

4601.4.1 Construction documents. Construction documents for the necessary alterations shall be completed within a time schedule approved by the fire code official.

4601.4.2 Completion of work. Work on the required alterations to the building shall be completed within a time schedule approved by the fire code official.

4601.4.3 Extension of time. The fire code official is authorized to grant necessary extensions of time when it can be shown that the specified time periods are not physically practical or pose an undue hardship. The granting of an extension of time for compliance shall be based on the showing of good cause and subject to the filing of an acceptable systematic plan of correction with the fire code official.

SECTION 4602 DEFINITIONS

4602.1 Definitions. The following word and term shall, for the purpose of this chapter and as used elsewhere in this Code, have the meaning shown herein.

EXISTING. Buildings, facilities or conditions that are already in existence, constructed or officially authorized prior to the adoption of this Code.

SECTION 4603 FIRE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS

4603.1 Required construction. Existing buildings shall comply with not less than the minimum provisions specified in Table 4603.1 and as further enumerated in Sections 4603.2 through 4603.7.3.

The provisions of this chapter shall not be construed to allow the elimination of fire protection systems or a reduction in the level of fire safety provided in buildings constructed in accordance with previously adopted codes.

EXCEPTION: Group U occupancies.

4603.2 Elevator operation. Existing elevators with a travel distance of 25 feet (7620 mm) or more above or below the main floor or other level of a building and intended to serve the needs of emergency personnel for firefighting or rescue purposes shall be provided with emergency operation in accordance with ASME A17.3.

4603.3 Vertical openings. Interior vertical shafts, including, but not limited to, stairways, elevator hoistways, service and utility shafts, that connect two or more stories of a building, shall be enclosed or protected as specified in Sections 4603.3.1 through 4603.3.7.

4603.3.1 Group I occupancies. In Group I occupancies, interior vertical openings connecting two or more stories shall be protected with 1-hour fire-resistance-rated construction.

4603.3.2 Three to five stories. In other than Group I occupancies, interior vertical openings connecting three to five stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system shall be installed throughout the building in accordance with Section 903.3.1.1 or 903.3.1.2.

EXCEPTIONS:

1. Vertical opening protection is not required for Group R-3 occupancies.
2. Vertical opening protection is not required for open parking garages and ramps.
3. Vertical opening protection is not required for escalators.

4603.3.3 More than five stories. In other than Group I occupancies, interior vertical openings connecting more than five stories shall be protected by 1-hour fire-resistance-rated construction.

EXCEPTIONS:

1. Vertical opening protection is not required for Group R-3 occupancies.
2. Vertical opening protection is not required for open parking garages and ramps.
3. Vertical opening protection is not required for escalators.

TABLE 4603.1 OCCUPANCY AND USE REQUIREMENTS

SECTION	USE			OCCUPANCY CLASSIFICATION																		
	High Rise	Atrium and covered mall	Underground building	A	B	E	F	H-1	H-2	H-3	H-4	H-5	I-1	I-2	I-3	I-4	M	R-1	R-2	R-3	R-4	S
4603.2	R		R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
4603.3.1	R		R										R	R	R	R						
4603.3.2	R		R	R	R	R	R	R	R	R	R	R					R	R	R		R	R
4603.3.3	R		R	R	R	R	R	R	R	R	R	R					R	R	R		R	R
4603.3.4		R																				
4603.3.5					R												R					
4603.3.6				R		R	R	R	R	R	R	R	R	R	R	R		R	R	R	R	R
4603.3.7				R		R	R	R	R	R	R	R	R	R	R	R		R	R	R	R	R
4603.4				R			R		R	R							R					
4603.5	R		R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	R
4603.6.1						R																
4603.6.2													R									
4603.6.3														R								
4603.6.4															R							
4603.6.5																	R					
4603.6.6																		R				
4603.6.7																					R	
4603.7																	R	R	R	R	R	
4604.4	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

R= The building is required to comply.

4603.3.4 Atriums and covered malls. In other than Group I occupancies, interior vertical openings in a covered mall building or a building with an atrium shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system shall be installed throughout the building in accordance with Section 903.3.1.1 or 903.3.1.2.

- EXCEPTIONS:
1. Vertical opening protection is not required for Group R-3 occupancies.
 2. Vertical opening protection is not required for open parking garages and ramps.

4603.3.5 Escalators in Group B and M occupancies. Escalators creating vertical openings connecting any number of stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic fire sprinkler system in accordance with Section 903.3.1.1 installed throughout the building, with a draft curtain and closely spaced sprinklers around the escalator opening.

4603.3.6 Escalators connecting four or fewer stories. In other than Group B and M occupancies, escalators creating vertical openings connecting four or fewer stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 shall be installed throughout the building, and a draft curtain with closely spaced sprinklers shall be installed around the escalator opening.

4603.3.7 Escalators connecting more than four stories. In other than Group B and M occupancies, escalators creating vertical openings connecting five or more stories shall be protected by 1-hour fire-resistance-rated construction.

4603.4 Sprinkler systems. An automatic sprinkler system shall be provided in all existing buildings in accordance with Sections 4603.4.1 and 4603.4.2.

4603.4.1 Pyroxylin plastics. An automatic sprinkler system shall be provided throughout existing buildings where cellulose nitrate film or pyroxylin plastics are manufactured, stored or handled in quantities exceeding 100 pounds (45 kg).

Vaults located within buildings for the storage of raw pyroxylin shall be protected with an approved automatic sprinkler system capable of discharging 1.66 gallons per minute per square foot (68 L/min/m²) over the area of the vault.

4603.4.2 Group I-2. An automatic sprinkler system shall be provided throughout existing Group I-2 fire areas. The sprinkler system shall be provided throughout the floor where the Group I-2 occupancy is located, and in all floors between the Group I-2 occupancy and the level of exit discharge.

4603.4.3 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. No building shall be constructed for, used for, or converted to occupancy as a nightclub except in accordance with this section.

4603.5 Standpipes. Existing structures with occupied floors located more than 50 feet (15,240 mm) above or below the lowest level of fire department vehicle access shall be equipped with standpipes installed in accordance with Section 905. The standpipes shall have an approved fire department connection with hose connections at each floor level above or below the lowest level of fire department access. The fire code official is authorized to approve the installation of manual standpipe systems to achieve compliance with this section where the responding fire department is capable of providing the required hose flow at the highest standpipe outlet.

4603.6 Fire alarm systems. An approved fire alarm system shall be installed in existing buildings and structures in accordance with Sections 4603.6.1 through 4603.6.7 and provide occupant notification in accordance with Section 907.6 unless other requirements are provided by other sections of this code.

EXCEPTION: Occupancies with an existing, previously approved fire alarm system.

4603.6.1 Group E. A fire alarm system shall be installed in existing Group E occupancies in accordance with Section 907.2.3.

EXCEPTIONS:

1. A manual fire alarm system is not required in a building with a maximum area of 1,000 square feet (93 m²) that contains a single classroom and is located no closer than 50 feet (15,240 mm) from another building.
2. A manual fire alarm system is not required in Group E occupancies with an occupant load less than 50.

4603.6.2 Group I-1. An automatic fire alarm system shall be installed in existing Group I-1 residential care/assisted living facilities in accordance with Section 907.2.6.1.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits if located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that travel distances required in Section 907.5.2 are not exceeded.
2. Where each sleeping room has a means of egress door opening directly to an exterior egress balcony that leads directly to the exits in accordance with WAC 51-50-1019, and the building is not more than three stories in height.

4603.6.3 Group I-2. An automatic fire alarm system shall be installed in existing Group I-2 occupancies in accordance with Section 907.2.6.2.

EXCEPTION: Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits if located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that travel distances required in Section 907.5.2.1 are not exceeded.

4603.6.4 Group I-3. An automatic and manual fire alarm system shall be installed in existing Group I-3 occupancies in accordance with Section 907.2.6.3.

4603.6.5 Group R-1. A fire alarm system and smoke alarms shall be installed in existing Group R-1 occupancies in accordance with Sections 4603.6.5.1 through 4603.6.5.2.1.

4603.6.5.1 Group R-1 hotel and motel manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 hotels and motels more than three stories or with more than 20 sleeping units.

EXCEPTIONS:

1. Buildings less than two stories in height where all sleeping units, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each sleeping unit has direct access to a public way, exit court or yard.
2. Manual fire alarm boxes are not required throughout the building when the following conditions are met:
 - 2.1. The building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2;
 - 2.2. The notification appliances will activate upon sprinkler water flow; and
 - 2.3. At least one manual fire alarm box is installed at an approved location.

4603.6.5.1.1 Group R-1 hotel and motel automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 hotels and motels throughout all interior corridors serving sleeping rooms not equipped with an approved, supervised sprinkler system installed in accordance with WAC 51-50-0903.

EXCEPTION: An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

4603.6.5.2 Group R-1 boarding and rooming houses manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 boarding and rooming houses.

EXCEPTION: Buildings less than two stories in height where all sleeping units, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each sleeping unit has direct access to a public way, exit court or yard.

4603.6.5.2.1 Group R-1 boarding and rooming houses automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 boarding and rooming houses throughout all interior corridors serving sleeping units not equipped with an approved, supervised sprinkler system installed in accordance with WAC 51-50-0903.

EXCEPTION: Buildings equipped with single-station smoke alarms meeting or exceeding the requirements of Section 907.2.10.1 and where the fire alarm system includes at least one manual fire alarm box per floor arranged to initiate the alarm.

4603.6.6 Group R-2. An automatic or manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-2 occupancies more than three stories in height or with more than 16 dwelling or sleeping units.

EXCEPTIONS:

1. Where each living unit is separated from other contiguous living units by fire barriers having a fire-resistance rating of not less than 0.75 hour, and where each living unit has either its own independent exit or its own independent stairway or ramp discharging at grade.
2. A separate fire alarm system is not required in buildings that are equipped throughout with an approved supervised automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 and having a local alarm to notify all occupants.
3. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units and are protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, provided that dwelling units either have a means of egress door opening directly to an exterior exit access that leads directly to the exits or are served by open-ended corridors designed in accordance with Section 1023.6, Exception 4.

4603.6.7 Group R-4. This section not adopted.

EXCEPTIONS:

1. Where there are interconnected smoke alarms meeting the requirements of Section 907.2.11 and there is at least one manual fire alarm box per floor arranged to continuously sound the smoke alarms.
2. Other manually activated, continuously sounding alarms approved by the fire code official.

4603.7 Single and multiple-station smoke alarms. Single and multiple-station smoke alarms shall be installed in existing Group R occupancies and in dwellings not classified as Group R occupancies in accordance with Sections 4603.7.1 through 4603.7.3.

4603.7.1 Where required. Existing Group R occupancies and dwellings not classified as Group R occupancies not already provided with single-station smoke alarms shall be provided with single-station smoke alarms. Installation shall be in accordance with Section 907.2.10, except as provided in Sections 4603.7.2 and 4603.7.3.

4603.7.2 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling or sleeping unit, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

EXCEPTIONS:

1. Interconnection is not required in buildings that are not undergoing alterations, repairs or construction of any kind.
2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.

4603.7.3 Power source. Single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

EXCEPTIONS:

1. Smoke alarms are permitted to be solely battery operated in existing buildings where no construction is taking place.
2. Smoke alarms are permitted to be solely battery operated in buildings that are not served from a commercial power source.
3. Smoke alarms are permitted to be solely battery operated in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.

4603.8 Carbon monoxide alarms. Existing Group R occupancies shall be provided with carbon monoxide alarms. R-2 occupancies not already equipped with carbon monoxide alarms shall be provided with carbon monoxide alarms when alterations, repairs or additions requiring a permit occur, or

when one or more sleeping rooms are added or created. The carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions.

EXCEPTIONS:

1. Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or electrical permits.
2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems.
3. Sleeping units or dwelling units in R-1 occupancies and R-2 college dormitories, hotel, and DSHS licensed boarding home and residential treatment facility occupancies which do not themselves contain a fuel-burning appliance, a fuel-burning fireplace, or have an attached garage, but which are located in a building with a fuel-burning appliance, a fuel-burning fireplace, or an attached garage, need not be provided with carbon monoxide alarms provided that:
 - a. The sleeping units or dwelling unit is not adjacent to any room which contains a fuel-burning appliance, a fuel-burning fireplace, or an attached garage; and
 - b. The sleeping units or dwelling unit is not connected by duct work or ventilation shafts with a supply or return register in the same room to any room containing a fuel-burning appliance, a fuel-burning fireplace, or to an attached garage; and
 - c. The building is provided with a common area carbon monoxide detection system.
 - d. An open parking garage, as defined in the International Building Code, or enclosed parking garage ventilated in accordance with Section 404 of the International Mechanical Code shall not be deemed to be an attached garage.

SECTION 4604 MEANS OF EGRESS FOR EXISTING BUILDINGS

4604.1 General. Means of egress in existing buildings shall comply with Section 1030 and 4604.2 through 4604.23.

EXCEPTION:

Means of egress conforming to the requirements of the building code under which they were constructed and Section 1030 shall not be required to comply with 4604.2 through ((4604.21)) 4604.23.

4604.1.1 Evaluation. Existing buildings that were not required to comply with a building code at the time of construction, and that constitute a distinct hazard to life as determined by the fire official, shall comply with the minimum egress requirements when specified in Table 4603.1 as further enumerated in Sections 4604.2 through 4604.23. The fire official shall notify the building owner in writing of the distinct hazard and, in addition shall have the authority to require a life safety evaluation be prepared, consistent with the requirements of Section 104.7.2. The life safety evaluation shall identify any changes to the means of egress that are necessary to provide safe egress to occupants and shall be subject to review and approval by the fire and building code officials. The building shall be modified to comply with the recommendations set forth in the approved evaluation.

4604.2 Elevators, escalators and moving walks. Elevators, escalators and moving walks shall not be used as a component of a required means of egress.

EXCEPTIONS:

1. Elevators used as an accessible means of egress where allowed by Section 1007.4.
2. Previously approved escalators and moving walks in existing buildings.

4604.3 Exit sign illumination. Exit signs shall be internally or externally illuminated. The face of an exit sign illuminated from an external source shall have an intensity of not less than 5 foot-candles (54 lux). Internally illuminated signs shall provide equivalent luminance and be listed for the purpose.

EXCEPTION: Approved self-luminous signs that provide evenly illuminated letters shall have a minimum luminance of 0.06 foot-lamberts (0.21 cd/m²).

4604.4 Power source. Where emergency illumination is required in Section 4604.5, exit signs shall be visible under emergency illumination conditions.

EXCEPTION: Approved signs that provide continuous illumination independent of external power sources are not required to be connected to an emergency electrical system.

4604.5 Illumination emergency power. The power supply for means of egress illumination shall normally be provided by the premises' electrical supply. In the event of power supply failure, illumination shall be automatically provided from an emergency system for the following occupancies where such occupancies require two or more means of egress:

1. Group A having 50 or more occupants.

EXCEPTION: Assembly occupancies used exclusively as a place of worship and having an occupant load of less than 300.

2. Group B buildings three or more stories in height, buildings with 100 or more occupants above or below a level of exit discharge serving the occupants or buildings with 1,000 or more total occupants.

3. Group E in interior stairs, corridors, windowless areas with student occupancy, shops and laboratories.

4. Group F having more than 100 occupants.

EXCEPTION: Buildings used only during daylight hours which are provided with windows for natural light in accordance with the International Building Code.

5. Group I.
6. Group M.

EXCEPTION: Buildings less than 3,000 square feet (279 m²) in gross sales area on one story only, excluding mezzanines.

7. Group R-1.

EXCEPTION: Where each sleeping unit has direct access to the outside of the building at grade.

8. Group R-2.

EXCEPTION: Where each dwelling unit or sleeping unit has direct access to the outside of the building at grade.

9. Group R-4.

EXCEPTION: Where each sleeping unit has direct access to the outside of the building at ground level.

4604.5.1 Emergency power duration and installation. In other than Group I-2, the emergency power system shall provide power for not less than 60 minutes and consist of storage batteries, unit equipment or an on-site generator. In Group I-2, the emergency power system shall provide power for not less than 90 minutes and consist of storage batteries, unit equipment or an on-site generator. The installation of the emergency power system shall be in accordance with Section 4604.

4604.6 Guards. Guards complying with this section shall be provided at the open sides of means of egress that are more than 30 inches (762 mm) above the floor or grade below.

4604.6.1 Height of guards. Guards shall form a protective barrier not less than 42 inches (1067 mm) high.

- EXCEPTIONS:
1. Existing guards on the open side of stairs shall be not less than 30 inches (760 mm) high.
 2. Existing guards within dwelling units shall be not less than 36 inches (910 mm) high.
 3. Existing guards in assembly seating areas.

4604.6.2 Opening limitations. Open guards shall have balusters or ornamental patterns such that a 6-inch-diameter (152 mm) sphere cannot pass through any opening up to a height of 34 inches (864 mm).

- EXCEPTIONS:
1. At elevated walking surfaces for access to, and use of, electrical, mechanical or plumbing systems or equipment, guards shall have balusters or be of solid materials such that a sphere with a diameter of 21 inches (533 mm) cannot pass through any opening.
 2. In occupancies in Group I-3, F, H or S, the clear distance between intermediate rails measured at right angles to the rails shall not exceed 21 inches (533 mm).
 3. Approved existing open guards.

4604.7 Minimum required egress width. The means of egress width shall not be less than as required by the code under which constructed but not less than as required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by the factors in Table 4604.7 and not less than specified elsewhere in this section. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

TABLE 4604.7
EGRESS WIDTH PER OCCUPANT SERVED

OCCUPANCY	WITHOUT SPRINKLER SYSTEM		WITH SPRINKLER SYSTEM ^a	
	Stairways (inches per occupant)	Other egress components (inches per occupant)	Stairways (inches per occupant)	Other egress components (inches per occupant)
Occupancies other than those listed below	0.3	0.2	0.2	0.15

OCCUPANCY	WITHOUT SPRINKLER SYSTEM		WITH SPRINKLER SYSTEM ^a	
	Stairways (inches per occupant)	Other egress components (inches per occupant)	Stairways (inches per occupant)	Other egress components (inches per occupant)
Hazardous: H-1, H-2, H-3 and H-4	Not permitted	Not permitted	0.3	0.2
Institutional: I-2	Not permitted	Not permitted	0.3	0.2

For SI: 1 inch = 25.4 mm.

a. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

4604.8 Size of doors. The minimum width of each door opening shall be sufficient for the occupant load thereof and shall provide a clear width of not less than 28 inches (711 mm). Where this section requires a minimum clear width of 28 inches (711 mm) and a door opening includes two door leaves without a mullion, one leaf shall provide a clear opening width of 28 inches (711 mm). The maximum width of a swinging door leaf shall be 48 inches (1219 mm) nominal. Means of egress doors in an occupancy in Group I-2 used for the movement of beds shall provide a clear width not less than 41.5 inches (1054 mm). The height of doors shall not be less than 80 inches (2032 mm).

- EXCEPTIONS:
1. The minimum and maximum width shall not apply to door openings that are not part of the required means of egress in occupancies in Groups R-2 and R-3.
 2. Door openings to storage closets less than 10 square feet (0.93 m²) in area shall not be limited by the minimum width.
 3. Width of door leaves in revolving doors that comply with Section 1008.1.4.1 shall not be limited.
 4. Door openings within a dwelling unit shall not be less than 78 inches (1981 mm) in height.
 5. Exterior door openings in dwelling units, other than the required exit door, shall not be less than 76 inches (1930 mm) in height.
 6. Exit access doors serving a room not larger than 70 square feet (6.5 m²) shall be not less than 24 inches (610 mm) in door width.

4604.9 Opening force for doors. The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding and folding doors, the door latch shall release when subjected to a force of not more than 15 pounds (66 N). The door shall be set in motion when subjected to a force not exceeding 30 pounds (133 N). The door shall swing to a full open position when subjected to a force of not more than 50 pounds (222 N). Forces shall be applied to the latch side.

4604.10 Revolving doors. Revolving doors shall comply with the following:

1. A revolving door shall not be located within 10 feet (3048 mm) of the foot or top of stairs or escalators. A dispersal area shall be provided between the stairs or escalators and the revolving doors.
2. The revolutions per minute for a revolving door shall not exceed those shown in Table 4604.10.
3. Each revolving door shall have a conforming side-hinged swinging door in the same wall as the revolving door and within 10 feet (3048 mm).

- EXCEPTIONS:
1. A revolving door is permitted to be used without an adjacent swinging door for street-floor elevator lobbies provided a stairway, escalator or door from other parts of the building does not discharge through the lobby and the lobby does not have any occupancy or use other than as a means of travel between elevators and a street.
 2. Existing revolving doors where the number of revolving doors does not exceed the number of swinging doors within 20 feet (6096 mm).

4604.10.1 Egress component. A revolving door used as a component of a means of egress shall comply with Section 4604.10 and all of the following conditions:

1. Revolving doors shall not be given credit for more than 50 percent of the required egress capacity.
2. Each revolving door shall be credited with not more than a 50-person capacity.
3. Revolving doors shall be capable of being collapsed when a force of not more than 130 pounds (578 N) is applied within 3 inches (76 mm) of the outer edge of a wing.

4604.11 Stair dimensions for existing stairs. Existing stairs in buildings shall be permitted to remain if the rise does not exceed 8 1/4 inches (210 mm) and the run is not less than 9 inches (229 mm). Existing stairs can be rebuilt.

EXCEPTION: Other stairs approved by the fire code official.

**TABLE 4604.10
REVOLVING DOOR SPEEDS**

INSIDE DIAMETER	POWER-DRIVEN-TYPE SPEED CONTROL (RPM)	MANUAL-TYPE SPEED CONTROL (RPM)
6' 6"	11	12
7' 0"	10	11
7' 6"	9	11
8' 0"	9	10
8' 6"	8	9
9' 0"	8	9
9' 6"	7	8
10' 0"	7	8

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

4604.11.1 Dimensions for replacement stairs. The replacement of an existing stairway in a structure shall not be required to comply with the new stairway requirements of

WAC 51-11-1009 where the existing space and construction will not allow a reduction in pitch or slope.

4604.12 Winders. Existing winders shall be allowed to remain in use if they have a minimum tread depth of 6 inches (152 mm) and a minimum tread depth of 9 inches (229 mm) at a point 12 inches (305 mm) from the narrowest edge.

4604.13 Circular stairways. Existing circular stairs shall be allowed to continue in use provided the minimum depth of tread is 10 inches (254 mm) and the smallest radius shall not be less than twice the width of the stairway.

4604.14 Stairway handrails. Stairways shall have handrails on at least one side. Handrails shall be located so that all portions of the stairway width required for egress capacity are within 44 inches (1118 mm) of a handrail.

EXCEPTION: Aisle stairs provided with a center handrail are not required to have additional handrails.

4604.14.1 Height. Handrail height, measured above stair tread nosings, shall be uniform, not less than 30 inches (762 mm) and not more than 42 inches (1067 mm).

4604.15 Slope of ramps. Ramp runs utilized as part of a means of egress shall have a running slope not steeper than one unit vertical in 10 units horizontal (10 percent slope). The slope of other ramps shall not be steeper than one unit vertical in 8 units horizontal (12.5 percent slope).

4604.16 Width of ramps. Existing ramps are permitted to have a minimum width of 30 inches (762 mm) but not less than the width required for the number of occupants served as determined by Section 1005.1.

4604.17 Fire escape stairs. Fire escape stairs shall comply with Sections 4604.17.1 through 4604.17.7.

4604.17.1 Existing means of egress. Fire escape stairs shall be permitted in existing buildings but shall not constitute more than 50 percent of the required exit capacity.

4604.17.2 Protection of openings. Openings within 10 feet (3048 mm) of fire escape stairs shall be protected by fire door assemblies having a minimum 3/4-hour fire-resistance rating.

EXCEPTION: In buildings equipped throughout with an approved automatic sprinkler system, opening protection is not required.

4604.17.3 Dimensions. Fire escape stairs shall meet the minimum width, capacity, riser height and tread depth as specified in Section 4604.10.

4604.17.4 Access. Access to a fire escape from a corridor shall not be through an intervening room. Access to a fire escape stair shall be from a door or window meeting the criteria of Section 1005.1. Access to a fire escape stair shall be directly to a balcony, landing or platform. These shall be no higher than the floor or window sill level and no lower than 8 inches (203 mm) below the floor level or 18 inches (457 mm) below the window sill.

4604.17.5 Materials and strength. Components of fire escape stairs shall be constructed of noncombustible materials. Fire escape stairs and balconies shall support the dead load plus a live load of not less than 100 pounds per square

foot (4.78 kN/m²). Fire escape stairs and balconies shall be provided with a top and intermediate handrail on each side. The fire code official is authorized to require testing or other satisfactory evidence that an existing fire escape stair meets the requirements of this section.

4604.17.6 Termination. The lowest balcony shall not be more than 18 feet (5486 mm) from the ground. Fire escape stairs shall extend to the ground or be provided with counter-balanced stairs reaching the ground.

EXCEPTION: For fire escape stairs serving 10 or fewer occupants, an approved fire escape ladder is allowed to serve as the termination.

4604.17.7 Maintenance. Fire escapes shall be kept clear and unobstructed at all times and shall be maintained in good working order.

4604.18 Corridors. Corridors serving an occupant load greater than 30 and the openings therein shall provide an effective barrier to resist the movement of smoke. Transoms, louvers, doors and other openings shall be kept closed or self-closing.

EXCEPTIONS:

1. Corridors in occupancies other than in Group H, which are equipped throughout with an approved automatic sprinkler system.
2. Patient room doors in corridors in occupancies in Group I-2 where smoke barriers are provided in accordance with the International Building Code.
3. Corridors in occupancies in Group E where each room utilized for instruction or assembly has at least one-half of the required means of egress doors opening directly to the exterior of the building at ground level.
4. Corridors that are in accordance with the International Building Code.

4604.18.1 Corridor openings. Openings in corridor walls shall comply with the requirements of the International Building Code.

EXCEPTIONS:

1. Where 20-minute fire door assemblies are required, solid wood doors at least 1.75 inches (44 mm) thick or insulated steel doors are allowed.
2. Openings protected with fixed wire glass set in steel frames.
3. Openings covered with 0.5-inch (12.7 mm) gypsum wallboard or 0.75-inch (19.1 mm) plywood on the room side.
4. Opening protection is not required when the building is equipped throughout with an approved automatic sprinkler system.

4604.18.2 Dead ends. Where more than one exit or exit access doorway is required, the exit access shall be arranged such that dead ends do not exceed the limits specified in Table 4604.17.2.

EXCEPTION: A dead-end passageway or corridor shall not be limited in length where the length of the dead-end passageway or corridor is less than 2.5 times the least width of the dead-end passageway or corridor.

4604.18.3 Exit access travel distance. Exits shall be located so that the maximum length of exit access travel, measured from the most remote point to an approved exit along the natural and unobstructed path of egress travel, does not exceed the distances given in Table 4604.17.2.

4604.18.4 Common path of egress travel. The common path of egress travel shall not exceed the distances given in Table 4604.18.2.

4604.19 Stairway discharge identification. A stairway in an exit enclosure which continues below its level of exit discharge shall be arranged and marked to make the direction of egress to a public way readily identifiable.

EXCEPTION: Stairs that continue one-half story beyond their levels of exit discharge need not be provided with barriers where the exit discharge is obvious.

4604.20 Exterior stairway protection. Exterior exit stairs shall be separated from the interior of the building as required in Section 1026.6. Openings shall be limited to those necessary for egress from normally occupied spaces.

EXCEPTIONS:

1. Separation from the interior of the building is not required for buildings that are two stories or less above grade where the level of exit discharge serving such occupancies is the first story above grade.
2. Separation from the interior of the building is not required where the exterior stairway is served by an exterior balcony that connects two remote exterior stairways or other approved exits, with a perimeter that is not less than 50 percent open. To be considered

open, the opening shall be a minimum of 50 percent of the height of the enclosing wall, with the top of the opening not less than 7 feet (2134 mm) above the top of the balcony.

3. Separation from the interior of the building is not required for an exterior stairway located in a building or structure that is permitted to have unenclosed interior stairways in accordance with Section 1022.

4. Separation from the interior of the building is not required for exterior stairways connected to open-ended corridors, provided that:

4.1. The building, including corridors and stairs, is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

4.2. The open-ended corridors comply with Section 1018.

4.3. The open-ended corridors are connected on each end to an exterior exit stairway complying with Section 1026.

4.4. At any location in an open-ended corridor where a change of direction exceeding 45 degrees occurs, a clear opening of not less than 35 square feet (3 m²) or an exterior stairway shall be provided. Where clear openings are provided, they shall be located so as to minimize the accumulation of smoke or toxic gases.

**TABLE 4604.18.2
COMMON PATH, DEAD-END AND TRAVEL DISTANCE LIMITS (by occupancy)**

OCCUPANCY	COMMON PATH LIMIT		DEAD-END LIMIT		TRAVEL DISTANCE LIMIT	
	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)
Group A	20/75 ^a	20/75 ^a	20 ^b	20 ^b	200	250
Group B	75	100	50	50	200	250
Group E	75	75	20	50	200	250
Group F-1, S-1 ^d	75	100	50	50	200	250
Group F-2, S-2 ^d	75	100	50	50	300	400
Group H-1	25	25	0	0	75	75
Group H-2	50	100	0	0	75	100
Group H-3	50	100	20	20	100	150
Group H-4	75	75	20	20	150	175
Group H-5	75	75	20	20	150	200
Group I-1	75	75	20	50	200	250
Group I-2 (Health Care)	NR ^e	NR ^e	NR	NR	150	200 ^c
Group I-3 (Detention and Correctional—Use Conditions II, III, IV, V)	100	100	NR	NR	150 ^c	200 ^c
Group I-4 (Day Care Centers)	NR	NR	20	20	200	250
Group M (Covered Mall)	75	100	50	50	200	400
Group M (Mercantile)	75	100	50	50	200	250
Group R-1 (Hotels)	75	75	50	50	200	250
Group R-2 (Apartments)	75	75	50	50	200	250
Group R-3 (One- and Two-Family)	NR	NR	NR	NR	NR	NR
Group R-4 (Residential Care/Assisted Living)	NR	NR	NR	NR	NR	NR
Group U	75	75	20	50	200	250

For SI: 1 foot = 304.8 mm.

a. 20 feet for common path serving 50 or more persons; 75 feet for common path serving less than 50 persons.

b. See Section 1028.9.5 for dead-end aisles in Group A occupancies.

d. See the International Building Code for special requirements on

c. This dimension is for the total travel distance, assuming incremental portions have fully utilized their allowable maximums. For travel distance within the room, and from the room exit access door to the exit, see the appropriate occupancy chapter.
spacing of doors in aircraft hangars.

e. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors placed a distance apart equal to not less than one-third of the length of the maximum overall diagonal dimension of the patient sleeping room or suite to be served, measured in a straight line between exit access doors.

NR = No requirements.

4604.21 Minimum aisle width. The minimum clear width of aisles shall be:

1. Forty-two inches (1067 mm) for aisle stairs having seating on each side.

EXCEPTION: Thirty-six inches (914 mm) where the aisle serves less than 50 seats.

2. Thirty-six inches (914 mm) for stepped aisles having seating on only one side.

EXCEPTION: Thirty inches (760 mm) for catchment areas serving not more than 60 seats.

3. Twenty inches (508 mm) between a stepped aisle handrail or guard and seating when the aisle is subdivided by the handrail.

4. Forty-two inches (1067 mm) for level or ramped aisles having seating on both sides.

EXCEPTION: Thirty-six inches (914 mm) where the aisle serves less than 50 seats.

5. Thirty-six inches (914 mm) for level or ramped aisles having seating on only one side.

EXCEPTION: Thirty inches (760 mm) for catchment areas serving not more than 60 seats.

6. Twenty-three inches (584 mm) between a stepped stair handrail and seating where an aisle does not serve more than five rows on one side.

4604.22 Stairway floor number signs. Existing stairs shall be marked in accordance with Section 1022.8.

4604.23 Egress path markings. Existing buildings of Group A, B, E, I, M and R-1 having occupied floors located more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access shall be provided with luminous egress path markings in accordance with Section 1024.

EXCEPTION: Open, unenclosed stairwells in historic buildings designated as historic under a state or local historic preservation program.

SECTION 4605 REQUIREMENTS FOR OUTDOOR OPERATIONS

4605.1 Tire storage yards. Existing tire storage yards shall be provided with fire apparatus access roads in accordance with Sections 4605.1.1 and 4605.1.2.

4605.1.1 Access to piles. Access roadways shall be within 150 feet (45,720 mm) of any point in the storage yard where storage piles are located, at least 20 feet (6096 mm) from any storage pile.

4605.1.2 Location within piles. Fire apparatus access roads shall be located within all pile clearances identified in Section 2505.4 and within all fire breaks required in Section 2505.5.

WSR 13-11-055 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-100—Filed May 14, 2013, 4:56 p.m., effective May 14, 2013, 4:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule 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 220-33-01000Y; 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 the second mainstem tanglenet commercial salmon period for the 2013 winter/spring season. Based on the inseason runsize of 107,500 upriver spring chinook, over one thousand eight hundred upriver chinook are available for harvest for commercial fisheries. Select area seasons remain in place, with a slight change in the net length for the South Channel area. Based on pre-season forecasts for ESA-listed salmonids, impacts associated with the season are expected to remain within allowable limits. The fishery is consistent with the *U.S. v. Oregon Management Agreement* and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 30 and May 14, 2013. 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: May 14, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000Z. Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) Area: SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

b) Dates: 10:00 AM to Midnight, Wednesday, May 15, 2013.

c) Allowable Possession: Adipose fin-clipped Chinook salmon, shad and white sturgeon (43-54 inch fork length). A maximum of 5 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday

through Saturday) that the fishery is open. Limit applies to mainstem only. Select Areas remain open under a 2-white-sturgeon weekly retention limit.

d) Sanctuaries: Grays River, Elochoman-B, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers, as applicable.

e) Gear: Drift nets only. 4 1/4" maximum mesh size (tangle net). Single-wall multi-filament net only. Monofilament tangle nets are not allowed. Mesh size is determined by placing three consecutive meshes under hand tension, and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001)(2)).

Net length can increase from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers. An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4" maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks required under miscellaneous regulations.

f) Miscellaneous Regulations:

Soak times, defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

Red corks are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the

boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required

Recovery Box: Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

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

24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

2. Deep River Select Area

a) Dates: Monday and Thursday night immediately through June 14, 2013. Open hours are 7 PM to 7 AM.

b) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

c) Gear: Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached

directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-122)(1)). Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-001)(2)). Nets that are fished at any time between official sunset and official sunrise must have **lighted buoys** on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable Possession: Salmon, shad, and white sturgeon. The sturgeon landing limit is two fish. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

f) 24-hour quick reporting is in effect for Washington buyers. (WAC 220-69-240) (14)(d)).

3. Tongue Point/South Channel

a) Dates: Monday and Thursday nights immediately through June 14, 2013. Open hours are 7:00 PM to 7:00 AM.

b) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) Gear: Gillnets. 9 3/4-inch maximum mesh, maximum net length of 250 fathoms. In the Tongue Point fishing area: weight on net not to exceed two pounds on any one fathom. In the South Channel fishing area: no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-001) (2)). Nets that are fished at any time between official sunset

and official sunrise must have **lighted buoys** on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable Possession: Salmon, shad, and white sturgeon. The sturgeon landing limit is two fish. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Fishers are required to call 971-230-8247 and leave a message including name, catch, and where and when fish will be sold. Permanent transportation rules in effect.

f) 24-hour quick reporting is in effect for Washington buyers. (WAC 220-69-240) (14)(d)).

4. Blind Slough/Knappa Slough Select Area

a) Area: Blind Slough and Knappa Slough areas are both open. The lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

b) Dates: Monday and Thursday nights immediately through June 14, 2013. Open hours are 7:00 PM to 7:00 AM.

c) Gear: Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001)(2)). Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable Possession: Salmon, shad, and white sturgeon. The sturgeon landing limit is two fish. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting is in effect for Washington buyers (WAC 220-69-240) (14)(d)). Permanent transportation rules in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Y Columbia River seasons
below Bonneville. (13-66)

WSR 13-11-056 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-98—Filed May 14, 2013, 4:57 p.m., effective May 14, 2013, 4:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available for one additional day of fishing in Marine Areas 10 and 11. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 14, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-32500G Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective immediately, through May 31, 2013, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 7, 8-1, 8-2, 9, 10, 11, 12 and the Discovery Bay Shrimp District, except as provided for in this section:

1) Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary - open May 15-18 and 29-31, 2013.

2) Marine Area 7 south of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary - open Wednesday through Saturday each week.

3) Marine Area 10 west of a line from West Point to Alki Point, and Marine Area 11 - Open May 22 from 7:00 a.m. through 3:00 p.m.

4) Marine Area 12 - Open May 15, 18 and 22 from 9:00 a.m. through 1:00 p.m.

5) Discovery Bay Shrimp District - Open May 15, 18 and 22 from 7:00 a.m. through 3:00 p.m.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500F Shrimp—Areas and seasons.
(13-43)

The following section of the Washington Administrative Code is repealed June 1, 2013:

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

WSR 13-11-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-95—Filed May 15, 2013, 9:07 a.m., effective May 18, 2013]

Effective Date of Rule: May 18, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900N; 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: In-season run analysis has predicted that about four thousand salmon are currently forecast for the Icicle River. Although upper Columbia River spring chinook have been listed as endangered under the Endangered Species Act (ESA), the salmon returning to the Icicle River are a nonendemic stock returning to Leavenworth National Fish Hatchery, and are not listed under the ESA. About one thousand four hundred salmon are needed to meet hatchery broodstock. The 2013 return ensures that the hatchery will meet its escapement needs; the remaining fish will be available for harvest for both the recreational and tribal harvest. Steelhead have also likely finished spawning and

cleared the river prior to the season. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: May 15, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Icicle River (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective May 18 through July 31, 2013, a person may fish for salmon in those waters of the Icicle River from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Rack. Daily limit, two hatchery salmon; minimum size, 12 inches. Night closure is in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 1, 2013:

WAC 232-28-61900N Exceptions to statewide
rules—Icicle River (Chelan
Co.)

WSR 13-11-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-96—Filed May 15, 2013, 9:20 a.m., effective May 29, 2013, 12:01 a.m.]

Effective Date of Rule: May 29, 2013, 12:01 a.m.

Purpose: Amend recreational 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: This rule change is necessary to ensure a successful youth fishing event. The fish will be planted in the lake two days prior to the event to better acclimate them. On the day of the event, only juvenile anglers will be allowed to fish in the lake. 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: May 15, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Heart Lake (Skagit Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 29 through June 1, 2013, it is unlawful to fish in those waters of Heart Lake, except open to fishing 6:00 a.m. to 12:00 p.m. June 1, 2013, to anglers participating in the youth fishing event. Juvenile anglers can continue to fish on June 1, 2013, after the youth fishing event closes.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 2, 2013:

WAC 232-28-61900Q Exceptions to statewide rules—Heart Lake (Skagit Co.)

**WSR 13-11-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-97—Filed May 15, 2013, 3:30 p.m., effective June 7, 2013, 6:00 p.m.]

Effective Date of Rule: June 7, 2013, 6:00 p.m.
Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900R; 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 rule change is necessary to ensure a safe and successful kids fish-in event. The fish will be planted the evening prior to the event to better acclimate them to the lake. 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: May 15, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Lake Sylvia (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, effective 6:00 p.m. June 7 through 6:00 a.m. June 8, 2013, it is unlawful to fish in waters of Lake Sylvia.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 a.m. June 8, 2013:

WAC 232-28-61900R Exceptions to statewide rules—Lake Sylvia (Grays Harbor Co.)

WSR 13-11-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-99—Filed May 15, 2013, 3:32 p.m., effective May 15, 2013, 3:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Z; 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 upriver spring chinook run size (including the Snake River) was updated on March 13, 2013, to 107,500, compared to the preseason forecast of 141,400 this represents approximately seventy-five percent of the preseason prediction. Based on the updated run size, and the estimated harvest for the entire Snake River within Washington, the Snake River recreational fisheries have approached the harvest allocation. Each of the lower two sections are estimated to have harvested over one hundred thirty hatchery adult chinook, so the fisheries are now closed. The Clarkston area has had no harvest, so it will remain open Sunday and Monday (May 19 and 20). Fishery managers will continue to monitor the run as the season progresses. 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: May 15, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619: (1) Effective immediately until further notice, a person may fish for and possess salmon in the waters of the Snake River from the intersection of Steptoe Canyon Road

with Wawawai River Road on the Whitman County shore, upriver approximately 12 miles to the Idaho state line (from the east levee of the Greenbelt boat launch in Clarkston, northwest across the Snake River to the WA/ID boundary marker on the Whitman County shore). Open Sundays and Mondays only. Daily limit of five hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900Z Exceptions to statewide
rules—Snake River. (13-79)

WSR 13-11-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-101—Filed May 15, 2013, 3:34 p.m., effective May 15, 2013, 3:34 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.045, 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: Reopens the area in Bonneville Pool for four days to sturgeon retention during the summer season. A portion of the Bonneville Pool sturgeon sport guideline was set aside to allow for a summer retention period. Over seven hundred of the one thousand one hundred sturgeon on the quota remain available for harvest. The dates for retention of white sturgeon are based on actions adopted at the joint Washington-Oregon public hearings on January 30 and May 14, 2013. 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: May 15, 2013.

Philip Anderson
Director

NEW SECTION

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

(1) Effective June 14-15 (Friday and Saturday) and June 21-22 (Friday and Saturday), 2013, it is permissible to retain white sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Legal size when open to retain white sturgeon in this area is 38 inches minimum and 54 inches maximum fork length.

(2) Effective immediately until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and all adjacent Washington tributaries from the Wauna powerlines upstream to Bonneville Dam, except that a person may retain white sturgeon on Thursdays, Fridays and Saturdays through June 15, 2013.

(3) Effective immediately through August 31, 2013, it is unlawful to fish for sturgeon from Bonneville Dam downstream 9 miles to a line crossing the Columbia River from navigation marker 82 on the Oregon shore, westerly to the boundary marker on the Washington shore upstream of Fir Point.

(4) Effective immediately through June 30, 2013, it is permissible to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and in all adjacent Washington tributaries. Legal size when open to retain white sturgeon in this area is 41 inches minimum and 54 inches maximum fork length.

(5) Effective July 1 through August 31, 2013, until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to Bonneville Dam and in all adjacent Washington tributaries.

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:

WAC 232-28-61900P Exceptions to statewide rules—Columbia River sturgeon. (13-67)

WSR 13-11-071

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 13-103—Filed May 16, 2013, 11:01 a.m., effective May 20, 2013, 12:01 a.m.]

Effective Date of Rule: May 20, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500R; 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: The Marine Area 2 recreational halibut fishery is projected to have taken the Pacific halibut quota set aside for the primary season and the northern nearshore set aside by the end of the day May 19, 2013. After that, the fishery must close for conservation purposes. This rule conforms to federal action taken by the National Marine Fisheries Service and 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: May 16, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500S Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective 12:01 a.m. May 20, 2013, 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 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** - Closed.

(i) **Catch Record Card Area 2 (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 coordinates below: Closed.

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

47 ° 58.00 N. lat, 124 ° 24.24 W. long

(3) **Catch Record Card Areas 3 and 4** - Closed.

(4) **Catch Record Card Area 5** - Open May 23 through May 26, 2013, Thursday through Sunday only. Open May 30 through June 1, 2013, Thursday through Saturday. Open Saturday June 8, 2013.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open May 23 through May 26, 2013, Thursday through Sunday. Open May 30 and 31, 2013, Thursday and Friday.

(6) **Catch Record Card Areas 11, 12, and 13** - Closed.

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

(8) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. May 19, 2013:

WAC 220-56-25500R Halibut—Areas and seasons. (13-76)

WSR 13-11-079**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 13-102—Filed May 16, 2013, 3:59 p.m., effective May 24, 2013, 12:01 a.m.]

Effective Date of Rule: May 24, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1 and 3. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 16, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000X Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 a.m. May 24 through 11:59 a.m. May 26, 2013, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 26, 2013:

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

WSR 13-11-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-104—Filed May 17, 2013, 3:14 p.m., effective May 17, 2013,
3:14 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900A; 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 filing permanent rules that were adopted by the Washington fish and wildlife commission for sportfishing, and permanent rules that will be adopted by the department for recreational salmon fishing. The salmon rules were agreed to with resource comanagers at the North of Falcon proceedings. All of these rules 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: May 17, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules.

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. Freshwater terminal gear restrictions: Terminal gear restrictions apply to all species, including salmon, unless otherwise provided.

2. Until further notice, the following waters are open the Saturday before Memorial Day:

Water Body

Bird Creek	Klickitat
Canyon Creek	Clark
Little White Salmon River	Skamania
Outlet Creek	Klickitat
Spring Cr. (Goldendale Hatchery)	Klickitat

County

3. Blue Creek (Lewis County), from mouth to posted sign above rearing pond outlet:

Open to all licensed anglers. Open for trout only June 1 until further notice.

4. Columbia River, including impoundments and all connecting sloughs, except Wells Ponds:

Salmon and trout handling rules apply, except effective immediately through June 15 in the mainstem Columbia from the Rocky Point/Tongue Point line upstream to OR/WA border, the rules apply only when fishing from vessels less than 30 feet in length (as substantiated by Coast Guard documentation or Marine Board registration).

5. Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County):

Salmon open year round.

6. Cowlitz River (Lewis County):

Closed waters from within a 100-foot radius of the new Cowlitz Trout Hatchery outfall structure, except anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card may fish within posted markers when adjacent waters are open.

7. Fort Borst Park Pond (Lewis County):

Open to all licensed anglers until further notice.

8. Green River (Cowlitz County):

From the mouth to 400 feet below the Toutle Hatchery water intake, open May 25 through May 31, 2013. Selective gear rules apply. Release all trout, except anglers may retain up to 2 hatchery steelhead.

9. Kalama River (Cowlitz County):

Anglers may retain up to 2 hatchery steelhead from: (a) 1,000 feet above the fishway at the upper salmon hatchery, upstream to Summers Creek; (b) Summers Creek upstream to 6420 Road (about 1 mile above gate at end of county road).

10. Lewis River (Clark County):

Fishing with two poles is permissible from Railroad Bridge near Kuhns Road upstream to mouth of East Fork Lewis, so long as the angler possesses a two-pole endorsement.

11. Lewis River, North Fork (Clark/Skamania counties):

Fishing with two poles is permissible from mouth to Johnson Creek, so long as the angler possesses a two-pole endorsement.

12. Merwin Lake (Reservoir) (Clark/Cowlitz County):

Kokanee limit is 10. Kokanee do not count as part of the trout daily limit.

13. Rainey Creek (Lewis County), from the mouth to Highway 12:

Release cutthroat and rainbow trout except those having a clipped adipose fin and a healed scar at the location of the clipped fin. Trout limit 5.

14. Silver Creek (tributary to Cowlitz River) (Lewis County):

Trout minimum length is 14 inches.

15. Skate Creek (Lewis County):

Statewide general rules in effect. Release cutthroat.

16. Swift Reservoir (Skamania County):

Landlocked salmon rules apply: Maximum length 15 inches.

17. Tilton River (Lewis County), from the mouth to West Fork:

Trout retention follows statewide general rules. Release cutthroat.

18. Toutle River, South Fork (Cowlitz County):

From the mouth to 4700 Road Bridge, open May 25 through May 31, 2013. Selective gear rules apply. Catch and release only, except anglers may retain up to 2 hatchery steelhead.

19. Vancouver Lake (Clark County):

From the flushing channel and the lake shoreline 400' east and west from the channel exit: Closed through May 31.

20. Washougal River (Clark Co):

From Mt. Norway Bridge upstream to Salmon Falls, anti-snagging rule and stationary gear restrictions are rescinded until further notice.

21. White Salmon River (Klickitat/Skamania counties):

From the county road bridge below the powerhouse upstream to Big Brothers Falls (river mile 16):

(a) Closed waters from Big Brothers Falls downstream 400 feet.

(b) Open the first Saturday in June until further notice.

(c) Selective gear rules apply.

22. Wind River (Skamania County):

(a) From 100 feet above Shipherd Falls to boundary marker approximately 800 yards downstream of Carson National Fish Hatchery, all tributaries are closed.

(b) Closed waters from Moore Bridge upstream to river source, including all tributaries.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900A Exceptions to statewide rules. (13-80)

WSR 13-11-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-91—Filed May 17, 2013, 4:05 p.m., effective May 17, 2013, 4:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: Upper Wheeler Reservoir is owned and operated by the Wenatchee Heights Reclamation District (WHRD) and has been closed to public access. Washington department of fish and wildlife (WDFW) has made arrangements with WHRD and the Wenatchee Valley Fly Fishers (WVFF) to grant public access to recreational anglers under "fly fishing only" regulations. The agreement includes fish stocking and a land-use agreement by WDFW, and site maintenance by the WVFF. While there are currently fifteen other fly fishing only waters throughout the state, there are no such waters currently open in Chelan County. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 17, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Upper Wheeler Reservoir. Notwithstanding the provisions of WAC 232-28-619, effective May 18, 2013, until further notice, a person may fish in waters of Upper Wheeler Reservoir. Flying fishing only; trout: Catch and release only. Statewide minimum size and daily limits are in effect for all other game fish. Fishing from a floating device equipped with a motor is prohibited.

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

WSR 13-11-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-106—Filed May 20, 2013, 4:55 p.m., effective May 21, 2013, 12:01 a.m.]

Effective Date of Rule: May 21, 2013, 12:01 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A harvestable quota of salmon south of the Queets River is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with pre-season fishing plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: May 20, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-24-04000S All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective 12:01 a.m. May 21 2013, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1 and 2, open: May 21 through June 30, 2013. Catch Reporting Areas 3 and 4 are closed.

(2) The Columbia River Control Zones is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

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

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

ing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. May 21, 2013:

WAC 220-24-04000R All-citizen commercial salmon troll. (13-71)

WSR 13-11-120

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-107—Filed May 21, 2013, 1:35 p.m., effective May 21, 2013, 2:00 p.m.]

Effective Date of Rule: May 21, 2013, 2:00 p.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: 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); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Allows the sale of fish caught in Yakama Nation tributary fisheries. 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 20, 2013. 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 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: May 21, 2013.

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 the Wind River, Klickitat River, Yakima River and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama Nation treaty may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Columbia River Tributaries upstream of Bonneville Dam
 - a. Season: 2:00 p.m. Tuesday May 21, 2013, 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, Wind River, Klickitat River, and Yakima River.
 - 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: salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sales are allowed only when lawfully enacted by Yakama Nation regulations.
 - e. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

**WSR 13-11-123
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-108—Filed May 21, 2013, 3:01 p.m., effective May 22, 2013, 7:00 p.m.]

Effective Date of Rule: May 22, 2013, 7:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered

under the Endangered Species Act (ESA). This rule 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 the third mainstem commercial salmon period for the 2013 winter/spring season. Adaptive management protocol within the current policy allows for adjustments to be made in order to meet conservation and fishery objectives. Based on the inseason runsize for upriver spring chinook, upriver chinook are available for harvest for commercial fisheries. Select area seasons remain in place. Based on the current forecasts for ESA-listed salmonids, impacts associated with the season are expected to remain within allowable limits. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 30 and May 20, 2013. 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 bio-

logical 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: May 21, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000A Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) Area: SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

b) Dates: 7:00 PM Wednesday May 22 to 7:00 AM Thursday May 23, 2013.

c) Allowable Possession: Adipose fin-clipped Chinook salmon, shad and white sturgeon (43-54 inch fork length). A maximum of 5 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Limit applies to mainstem only. Select Areas remain open under a 2-white-sturgeon weekly retention limit.

d) Sanctuaries: Grays River, Elochoman-B, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers, as applicable.

e) Gear: Drift nets only. 8" minimum mesh size. Mono-filament is allowed. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the

hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001)(2)).

f) Miscellaneous Regulations:

Soak times, defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

Red corks are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required

Recovery Box: Each boat is required to have two operable recovery boxes or one box with two chambers, on board. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

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

24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

2. Deep River Select Area

a) Dates: Monday and Thursday night immediately through June 14, 2013. Open hours are 7 PM to 7 AM.

b) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

c) Gear: Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-122)(1)). Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-001)(2)). Nets that are fished at any time between official sunset and official sunrise must have **lighted buoys** on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable Possession: Salmon, shad, and white sturgeon. The sturgeon landing limit is two fish. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

f) 24-hour quick reporting is in effect for Washington buyers. (WAC 220-69-240) (14)(d)).

3. Tongue Point/South Channel

a) Dates: Monday and Thursday nights immediately through June 14, 2013. Open hours are 7:00 PM to 7:00 AM.

b) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island; westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) Gear: Gillnets. 9 3/4-inch maximum mesh; maximum net length of 250 fathoms. In the Tongue Point fishing area: weight on net not to exceed two pounds on any one fathom. In the South Channel fishing area: no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas **may be onboard** a vessel if properly stored (WAC 220-33-001)(2)). Nets that are fished at any time between official sunset and official sunrise must have **lighted buoys** on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable Possession: Salmon, shad, and white sturgeon. The sturgeon landing limit is two fish. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Fishers are required to call 971-230-8247 and leave a message including name, catch, and where and when fish will be sold. Permanent transportation rules in effect.

f) 24-hour quick reporting is in effect for Washington buyers. (WAC 220-69-240) (14)(d)).

4. Blind Slough/Knappa Slough Select Area

a) Area: Blind Slough and Knappa Slough areas are both open. The lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

b) Dates: Monday and Thursday nights immediately through June 14, 2013. Open hours are 7:00 PM to 7:00 AM.

c) Gear: Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001)(2)). Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable Possession: Salmon, shad, and white sturgeon. The sturgeon landing limit is two fish. The sturgeon landing limit acts to limit the number of white sturgeon possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting is in effect for Washington buyers (WAC 220-69-240) (14)(d)). Permanent transportation rules in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 PM May 22, 2013:

WAC 220-33-01000Z Columbia River seasons below Bonneville. (13-100)

WSR 13-11-129

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed May 21, 2013, 4:52 p.m., effective May 26, 2013]

Effective Date of Rule: May 26, 2013.

Purpose: To amend TAKE CHARGE rule sections (WAC 182-532-700 and 182-532-720) so they comply with the special terms and conditions of the federal waiver renewal for the TAKE CHARGE medicaid program. Amendments revise the income requirement to: Allow incomes at or below two hundred fifty percent of the federal poverty level; and change third-party liability requirements, allowing clients with health insurance to apply for TAKE CHARGE.

Citation of Existing Rules Affected by this Order: Amending WAC 182-532-700 and 182-532-720.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: RCW 74.09.659.

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: Amending the TAKE CHARGE rule sections (WAC 182-532-700 and 182-532-720) is needed to immediately comply with the special terms and conditions of the federal waiver renewal for the TAKE CHARGE medicaid program. This emergency rule is necessary as the health care authority proceeds with regular rule making initiated under WSR 12-16-100. The agency proposed the permanent rule on May 16, 2013, under WSR 13-11-069. A public hearing for the permanent rule proposal is scheduled for June 25, 2013.

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

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

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

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

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

Date Adopted: May 21, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-532-700 TAKE CHARGE program—Purpose. TAKE CHARGE is a family planning demonstration and research program approved by the federal government under a medicaid program waiver. The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred fifty percent of the federal poverty level. See WAC 388-532-710 for a definition of TAKE CHARGE.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC and provide proof of citizenship or qualified alien status, and identity;

(b) Be a resident of the state of Washington as described in WAC 388-468-0005;

(c) Have income at or below two hundred fifty percent of the federal poverty level as described in WAC ((388-478-0075)) 182-505-0100;

(d) Need family planning services;

(e) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(f) Not be currently covered through another medical assistance program for family planning (~~(or have any health insurance that covers family planning, except as provided in WAC 388-530-790)~~).

(2) A client who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the department determines eligibility or for the duration of the demonstration and research program, whichever is shorter, as long as the criteria in subsection (1) and (2) of this section continue to be met. Upon reapplication for TAKE CHARGE by the client, the department may renew the coverage for additional periods of up to one year each, or for the duration of the demonstration and research program, whichever is shorter.