

WSR 13-16-004
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed July 25, 2013, 8:38 a.m., effective July 28, 2013]

Effective Date of Rule: July 28, 2013.

Purpose: The department is creating emergency WAC to support ESSSB [E2SSB] 5405 - Extended foster care services. ESSSB [E2SSB] 5405 authorizes children's administration to additionally provide extended foster care services to youth age eighteen up to twenty-one years who are eligible to receive foster care services authorized under RCW 74.13.031 and participating in a program or activity designed to promote employment or remove barriers to employment secondary vocational program. Youth whose dependency has been dismissed may enter a voluntary placement agreement (VPA) one time. A youth must agree to the entry of a dependency order within one hundred eighty days of the date the youth was placed in foster care through the VPA to continue to receive services.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-25-0518, 388-25-0520, 388-25-0522, 388-25-0524, 388-25-0526 and 388-25-0538; and amending WAC 388-25-0110, 388-148-0010, 388-25-0502, 388-25-0504, 388-25-0506, 388-25-0508, 388-25-0510, 388-25-0516, 388-25-0528, 388-25-0530, 388-25-0532, 388-25-0534, 388-25-0536, 388-25-0540, 388-25-0544, 388-25-0546, and 388-25-0548.

Statutory Authority for Adoption: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030.

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: ESSSB [E2SSB] 5405 - Extended foster care services enables Washington state to access a federal match of funds under 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." The act provides an option permitting states to use Title IV-E foster care funds for youth who wish to pursue secondary or postsecondary education programs from age eighteen up to twenty-one years old. ESHB [E2SSB] 5405 authorizes continued extended foster care services for youth ages eighteen to twenty-one years to complete a postsecondary academic or postsecondary vocational education program and expands the services to eligible youth participating in an employment related program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 17, Repealed 6.

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 17, Repealed 6.

Date Adopted: July 25, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0110 What is the effective date for termination of foster care payments? (1) The department ends payment on the day before the child actually leaves the foster home or facility. The department does not pay for the last day that a child is in a foster care home or facility.

(2) The department terminates family foster care payments for children in family foster care effective the date:

(a) The child no longer needs foster care; or

(b) The child no longer resides in foster care (~~(except as provided in WAC 388-25-0180)~~); (~~(or)~~)

(c) The child reaches the age of eighteen(-); or

(d) The child is no longer eligible for the extended foster care program and the dependency action is dismissed or voluntary placement agreement (VPA) is revoked. To be eligible for the extended foster care program a child, age eighteen must be:

(i) ((If the child continues to attend, but has not finished, high school or an equivalent educational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty-)) Completing a high school diploma or high school equivalency certificate;

(ii) ((If the child has applied and demonstrates he or she intends to timely enroll, or is enrolled and participating in a post-secondary education program, or a post-secondary vocational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child reaches his or her twenty first birthday or is no longer enrolled in and participating in a post-secondary program, whichever is earlier)) Completing a post-secondary academic or vocational program;

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(3) The department must terminate foster care payments for children in the behavior rehabilitative services program effective the date:

(a) The child no longer needs rehabilitative services; or

(b) The child is no longer served through contracted rehabilitative services program except as provided in WAC 388-25-0030; or

(c) The child reaches the age of eighteen and continues to attend, but has not finished, high school or an equivalent educational program and has a need for continued rehabilitative treatment services, the department may continue payments until the date the youth completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0502 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults in foster care at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth completes a secondary or post-secondary academic or vocational program, or participating in a program or activity designed to promote employment or remove barriers to employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0504 What is extended foster care? Extended foster care is a program offered to young adults, age eighteen up to twenty-one, who turn eighteen while in foster care, to enable them to ~~((complete))~~:

(1) Complete a high school diploma or ~~((general))~~ high school equivalency ~~((diploma))~~ certificate;

(2) Complete a post-secondary academic or vocational ~~((education))~~ program;

(3) Participate in a program or activity designed to promote employment or remove barriers to employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0506 Who is eligible for extended foster care? To be eligible for the extended foster care program a youth, on his or her eighteenth birthday, must:

(1) Be dependent under chapter 13.34 RCW~~((;~~
~~((2)))~~ be placed in foster care (as defined in WAC 388-25-0508) by children's administration, and:

(a) Be enrolled (as described in WAC 388-25-0512) in a high school or secondary education equivalency program; or

(b) Be enrolled (as described in WAC 388-25-0512) in a post-secondary academic or vocational education program; or

(c) Have applied for and can demonstrate intent to timely enroll in a post-secondary academic or vocational education program (as described in WAC 388-25-0514); or

(d) Be participating in a program or activity designed to promote employment or remove barriers to employment.

(2) Have had their dependency dismissed on their eighteenth birthday as the youth did not meet any of the criteria found in WAC 388-25-0506 (1)(a) through (d) or did not

agree to participate in the program and the youth has not reached the age of nineteen.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0508 When is a youth considered to be "in foster care"? For the purpose of determining initial eligibility for the extended foster care program, a youth is in foster care if the youth is under children's administration (CA) placement and care authority, is placed by CA in out of home care, in relative care, licensed foster home, licensed group care, or other suitable person placement. ~~((Provided))~~ A youth is considered to be in foster care:

(1) ~~((A))~~ If the youth ~~((who))~~ is temporarily away from a foster care placement in:

(a) A hospital;

(b) A drug/alcohol treatment facility;

(c) A mental health treatment facility; or

(d) A county detention center for less than thirty days ~~((in a county detention center is considered to be in foster care)).~~

(2) ~~((A))~~ If the youth ~~((who))~~ is temporarily away from his or her foster care placement without permission of the case worker or care giver, but who is expected to return to foster care within twenty days, is considered to be in foster care for purposes of determining initial eligibility.

(3) ~~((A))~~ If the youth ~~((who))~~ is committed to juvenile justice and rehabilitation administration custody and ~~((who))~~ resides in a foster home, group home, or community facility, as defined in RCW 74.15.020 (1)(a).

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0510 When is a youth not "in foster care"? For the purposes of determining initial eligibility for the extended foster care program, a youth is not in foster care if the youth is:

(1) Placed with a parent;

(2) In a dependency guardianship or chapter 13.36 RCW;

(3) Committed to and residing in a juvenile justice and rehabilitation administration ~~((JRA))~~ institution (as defined in RCW 13.30.020(12)) or to the department of corrections; or

(4) Absent from his/her foster care placement without permission of the case worker or care giver for more than twenty consecutive days.

NEW SECTION

WAC 388-25-0515 How does a youth demonstrate participation in a program or activity designed to promote employment or remove barriers to employment? (1) Actively participate in a state, federal, tribal or community program that addresses any barriers to employment that the youth may have and/or prepares or trains individuals for employment; or

(2) Involved in a self-directed program that will remove any barriers to employment and will prepare a youth for employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0516 ~~What if an eligible youth does not want to participate in the extended foster care program ((at age eighteen))?~~ ((Youth may elect to participate in the extended foster care program beginning on their eighteenth birthday. The law recognizes an eligible youth may need time beyond the eighteenth birthday to consider if they want continued foster care services. It provides a six-month grace period or a time for "trial independence", from date of youth's eighteenth birthday, to give the youth an opportunity to change their mind)) Participation in extended foster care is voluntary. A youth who does not agree to participate in extended foster care may request the court to dismiss the dependency.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0528 **How does a youth agree to participate in extended foster care program?** (1) An eligible dependent youth can agree to participate by:

((+)) (a) Signing an extended foster care agreement; or
((2)) (b) For developmentally ((delayed)) disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age nineteen; or

(b) Establishing a nonminor dependency before reaching age nineteen.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0530 **Where do youth obtain information about how to participate in the program?** (1) The department must provide dependent youth between the age of seventeen and seventeen and a half:

(a) Written documentation explaining the availability of extended foster care services.

(b) Detailed instructions on how to access such services after he or she reached age eighteen.

(2) Youth can contact:

((+)) (a) Youth's attorney/CASA/GAL.

((2)) (b) Youth's social worker.

((3)) (c) Local children's administration office.

((4)) (d) www.independence.wa.gov.

((5)) (e) 1-866-END-HARM.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0532 ~~Can ((a youth participating in the extended foster care program to complete a secondary~~

~~education or equivalency program continue to receive extended foster care services to participate in a post-secondary education program)) an extended foster care participant continue in extended foster care under a different eligibility category? Yes((, if at the time the secondary program is completed, the youth is enrolled in, or has applied to, and can demonstrate they intend to timely enroll in, a post-secondary academic or vocational program)). A youth may transition among the eligibility categories while under the same voluntary placement agreement or dependency order so long as the youth remains eligible during the transition.~~

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0534 ~~((Is there a trial independence period for a youth who completes his or her secondary education program while participating in extended foster care and before the youth enters a post secondary program))~~ If an extended foster care participant loses his or her eligibility before he or she turns nineteen, can he or she reapply for extended foster care? ((No, if a youth completes a secondary education program while in extended foster care, the dependency will be dismissed and foster care services will end, unless the youth has enrolled in, or applied to and can demonstrate an intent to timely enroll in, a post-secondary academic or vocational program)) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as:

(1) The youth has not turned nineteen; and

(2) The youth meets one of the conditions for eligibility in WAC 388-148-2506; and

(3) The youth has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0536 **What are CA's responsibilities to a youth who is participating in extended foster care?** Children's administration (CA) is required to have placement and care authority over the youth and to provide foster care services, including transition planning and independent living services, medical assistance through medicaid, and case management. Case management includes findings or approving a foster care placement for the youth, convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the youth, caseworker visits, and court-related duties, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the youth is progressing toward independence within state and federal mandates. CA has responsibility to inform the court of the status of the child (including health, safety, welfare, education status and continuing eligibility for extended foster care program). The department's placement and care authority over a youth receiving extended foster care services is solely for the purpose of providing services and does not create a legal responsibility for the actions of the youth receiving extended foster care services.

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

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0540 How does CA determine a youth's continuing eligibility for extended foster care program? At least every six months, children's administration will determine if youth continues to:

- (1) Agree to participate in the extended foster care program.
- (2) Be enrolled in an education program, vocational program, or participating in a program or activity designed to promote employment or remove barriers to employment, or is transitioning from one status to another.
- (3) Continue to reside in approved placement.
- (4) Comply with youth's responsibilities in WAC 388-25-0546.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0544 What are the youth's rights in the extended foster care program? Youth have a right to:

- (1) An approved foster care placement.
- (2) Foster care services including medical assistance through medicaid.
- (3) Participate in the court process as a party to the case.
- (4) Have an attorney appointed for them upon filing a notice of intent to file a petition for dependency and in dependency proceedings.
- (5) End their participation in the program at any time.
- (6) Referrals to community resources as appropriate.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0546 What must the youth do to remain in the extended foster care program? Unless otherwise authorized by court order the youth must:

- (1) Agree to participate in the program as expressed in the written extended foster care agreement;
- (2) Maintain standard of eligibility as set by the youth's academic program or employment related program;
- (3) Participate in the case plan, including monthly health and safety visits;
- (4) Acknowledge that children's administration (CA) has responsibility for the youth's care and placement by authorizing CA to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, educational records needed to determine continuing eligibility for the program, and for additional necessary services; and
- (5) Remain in the approved foster care placement and follow placement rules. This means the youth will:
 - (a) Stay in placement identified by CA or approved by the court;
 - (b) Obtain approval from case worker and notify caregiver for extended absence from the placement of more than three days; and

(c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and social worker.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0548 When is a youth no longer eligible for the extended foster care program? A youth is no longer eligible for the extended foster care program and the department will ask the court to dismiss the dependency when the youth:

- (1) Graduates from high school or equivalency program, and has not enrolled in, or applied for and demonstrated an intent to timely enroll in a post-secondary academic or vocational program;
- (2) Graduates from a post-secondary education or vocational program;
- (3) Reaches their twenty-first birthday;
- (4) Is no longer participating or enrolled in high school, equivalency program, post-secondary or vocational program, program promoting employment or removing barriers to employment;
- (5) No longer agrees to participate in foster care services;
- (6) Fails or refuses to comply with youth responsibilities outlined in WAC 388-25-0546; or
- (7) Is incarcerated in an adult detention facility on a criminal conviction.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or

(2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

"Children" or **"youth,"** for this chapter, means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age and pursuing a high school, equivalent course of study (GED), or vocational program or post-secondary academic or post-secondary vocational program, or program promoting employment or removing barriers to employment;

(3) Up to twenty-one years of age with developmental disabilities; or

(4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption.

"Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.

"Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.

"DCFS" means the division of children and family services.

"DDD" means division of developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Foster-adopt" means placement of a child with a foster parent(s) who intends to adopt the child, if possible.

"Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.

"Full licensure" means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.

"Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.

"Group receiving center" or "GRC" means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.

"Hearing" means the administrative review process.

"I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, including group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.

"Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

"Licensor" means:

(1) A division of licensed resources (DLR) employee at DSHS who:

(a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and

(b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.

(2) An employee of a child-placing agency who:

(a) Attests that foster homes supervised by the child-placing agency meets licensing requirements; and

(b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.

"Maternity service" as defined in RCW 74.15.020.

"Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

"Missing child" means:

(1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:

(a) The child's whereabouts are unknown; and/or

(b) The child has left care without the permission of the child's caregiver or CA.

(2) Children who are missing are categorized under one of the following definitions:

(a) **"Taken from placement"** means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detainment is in violation of the court order;

(b) **"Absence not authorized, whereabouts unknown"** means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or

(c) **"Absence not authorized, whereabouts known"** means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.

"Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has

previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings, which must be approved by the children's administration or the court.

"Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purpose of participating in the extended foster care program.

"Washington state patrol fire protection bureau" or **"WSP/FPB"** means the state fire marshal.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates a foster home, staffed residential home, and group facilities, including group

homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-25-0518 What is the trial independence or grace period?
- WAC 388-25-0520 Does an eligible youth who elects to participate in extended foster care on his or her eighteenth birthday receive a trial independence period?
- WAC 388-25-0522 When does the six-month trial independence period end?
- WAC 388-25-0524 If a youth does not remain enrolled in school during the trial independence period may the youth still elect to participate in the program?
- WAC 388-25-0526 Does a youth have to agree to participate in extended foster care program?
- WAC 388-25-0538 What is the CA's responsibility for the youth during the six-month trial independence period?

WSR 13-16-044

EMERGENCY RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-18—Filed July 31, 2013, 8:10 a.m., effective July 31, 2013, 8:10 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Provide issuers with the requirements for open enrollment in the individual health benefit plan market, and for special enrollment in the individual and small group health benefit plan markets.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-985.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.43.0122, 48.44.050, and 48.46.200.

Other Authority: 45 C.F.R. 155.420; 45 C.F.R. 155.725.

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: Emergency regulations are necessary because without clear instruction regarding the requirements for open and special enrollment applicable to the 2014 plan or policy year, confusion among insurers and policyholders regarding rights and obligations will occur,

preventing uniform and timely access to coverage in the individual and small group markets. Without open enrollment in the off-exchange individual market occurring concurrently with open enrollment on the exchange, issuers participating off the exchange are at significant risk for adverse selection, which can jeopardize the financial solvency of an issuer, payment of claims, and access to coverage at a reasonable cost. A prior emergency rule on this subject permitted open enrollment for the small group market. That emergency expires on July 31. Recently issued federal rules permit enrollment at any time in the small group market both on and off the exchange, removing the risk of adverse selection for that marketplace, and requiring the adoption of new emergency rules explaining this standard, as well as new special enrollment requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 8, Amended 1, 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 8, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 1, Repealed 0.

Date Adopted: July 31, 2013.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-170-400 Preexisting condition limitations.

For health plans offered, issued or renewed on or after January 1, 2014, issuers must not condition or otherwise limit enrollment based on preexisting health conditions.

NEW SECTION

WAC 284-170-410 Special enrollment requirements for small group plans.

(1) A "special enrollment period" means a period of time outside the initial or annual group renewal period during which an individual applicant may enroll if the individual has experienced a qualifying event. An issuer must make special enrollment periods available to an otherwise eligible applicant if the applicant has experienced one of the qualifying events identified in this section.

(2) A qualifying event for special enrollment in small group plans offered on or off the health benefit exchange is one of the following:

(a) The loss of employer sponsored insurance coverage, or of the coverage of a person under whose policy they were enrolled, unless the loss is based on the individual's voluntary termination of employer sponsored coverage, the misrepresentation

of a material fact affecting coverage or for fraud related to the terminated health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for adoption or adoption of the applicant for whom coverage is sought;

(f) A situation in which a plan no longer offers benefits to the class of similarly situated individuals that includes the applicant;

(g) Loss of individual or group coverage purchased on the health benefit exchange due to an error on the part of the exchange, the issuer or the U.S. Department of Health and Human Services.

(3) Nothing in this rule is intended to alter or affect the requirements of RCW 48.43.517.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

(5) An issuer must offer a special enrollee each benefit package available to members of the group who enrolled when first eligible. A special enrollee cannot be required to pay more for coverage than other members of the group who enrolled in the same coverage when first eligible. Any difference in benefits or cost-sharing requirements constitutes a different benefit package.

(6) An issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in any policy or certificate of coverage provided to an employer, plan sponsor, or enrollee. The notice must be substantially similar to the model notice provided by the U.S. Department of Labor or the U.S. Department of Health and Human Services.

(7) For children who experience a qualifying event, if the selected plan is not the plan on which the parent is then enrolled, or if the parent does not have coverage, the issuer must permit the parent to enroll when the child seeks enrollment for dependent coverage. An enrolling child must have access to any benefit package offered to employees, even if that requires the issuer to permit the parent to switch benefit packages.

NEW SECTION

WAC 284-170-412 Special enrollment periods for small group qualified health plans.

(1) Issuers of small group qualified health plans must comply with the additional special enrollment period requirements set forth in 45 CFR 155.420 (b)(2) and 45 CFR 155.725.

(2) In addition to meeting the requirements set forth in WAC 284-170-410, issuers must include in qualified health small group plan contract forms and required disclosure documents an explanation of special enrollment rights if one of the following triggering events occurs:

(a) In addition to the requirements for adopted, placed for adoption, and newborn children, the same special enrollment right accrues for foster children and children placed in foster care.

(b) The qualified individual, or his or her dependent, which was not previously a citizen, national or lawfully present individual gains such status. For purposes of this subsection, "dependent" means a dependent as defined in RCW 48.43.005.

(c) The individual demonstrates to the health benefit exchange that the qualified health plan in which they are enrolled violated a material provision of the coverage contract in relation to the individual;

(e) The individual becomes newly eligible for cost-sharing reductions or advance payment of premium tax credits, or the individual's dependent becomes newly eligible. For purposes of this subsection (2)(e) and (f), "dependent" means dependent as defined in 26 CFR 54.9801-2;

(f) the individual or their dependent who is currently enrolled in employer sponsored coverage is determined newly eligible for advance payment of premium tax credit pursuant to the criteria established in 45 CFR 155.420 (d)(6) (iii);

(g) In addition to the special enrollment event in WAC 284-170-410 (2)(d), a change in the individual's residence as the result of a permanent move results in new eligibility for previously unavailable qualified health plans;

(h) For qualified individuals who are an Indian, as defined by section 4 of the Indian Health Care Improvement Act, enrollment in a qualified health plan or change from one qualified health plan to another must be permitted one time per month, without requiring an additional special enrollment triggering event.

(3) If the health benefit exchange establishes earlier effective dates for special enrollment periods, pursuant to 45 CFR 155.420, an issuer must include in its plan documents and required disclosures an explanation of the effective date for special enrollment periods.

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

NEW SECTION

WAC 284-170-415 Duration and effective dates of small group special enrollment periods. (1) This section applies to nongrandfathered small group plans offered both on or off the health benefit exchange.

(2) Special enrollment periods must not be shorter than sixty days from the date of the qualifying event.

(3) The effective date of coverage for those enrolling in a small group plan through a special enrollment period is the first date of the next month after the application for coverage is received, unless one of the following exceptions applies:

(a) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption becomes the first effective date of coverage;

(b) For applicants enrolling after the fifteenth of the month, the issuer must begin coverage not later than the first

date of the second month after the application is received. If the applicant is enrolling due to marriage or the commencement of a domestic partnership, such applicant's coverage must begin on the first date of the next month, regardless of when in the month the application is received. An issuer may establish an earlier effective date at their discretion.

(c) For applicants enrolling because of marriage, either as spouse or as a dependent child, when notice of the marriage is received within sixty days of the marriage, coverage must begin no later than the first date of the month immediately following the date of marriage.

(4) An issuer must not refuse to enroll an applicant who applies within sixty days of the qualifying event, if the applicant would be eligible had the application been received during open enrollment.

NEW SECTION

WAC 284-170-420 Individual market open enrollment requirements. (1) For purposes of this section, "open enrollment" means a specific period of time each year during which enrollment in a health benefit plan is permitted.

(2) An issuer must limit the dates for enrollment in nongrandfathered plans offered on the individual market off the health benefit exchange to the same time period for open enrollment established by the health benefit exchange.

(3) In addition to the open enrollment period established by the exchange, an issuer participating in the off-exchange individual market must hold an open enrollment period between March 15th and April 30th each year, making its child-only policies available to those under age nineteen in compliance with WAC 284-43-985.

(4) An issuer must prominently display information on its web site about open enrollment periods and special enrollment periods, applicable to its individual health benefit plans offered either on or off the health benefit exchange.

(a) The web site information about enrollment periods must provide a consumer with the ability to access or request and receive an application packet for enrollment at any time.

(b) The displayed information must include details written in plain language explaining what constitutes a qualifying event for special enrollment.

(5) Written notice of open enrollment must be provided to enrolled persons at some point between September 1st and September 30th of each year.

NEW SECTION

WAC 284-170-425 Individual market special enrollment requirements. (1) For a nongrandfathered individual health plan offered on or off the health benefit exchange, an issuer must make a special enrollment period of not less than sixty days available to any person who experiences a qualifying event, permitting enrollment in an individual health benefit plan outside the open enrollment period. This requirement applies to plans offered on the health benefit exchange that cover pediatric oral benefits offered as essential health benefits necessary to satisfy minimum essential coverage requirements.

(2) A qualifying event means the occurrence of one of the following:

(a) The loss of employer sponsored insurance coverage due to action by either the employer or the issuer or due to the individual's loss of eligibility for the employer sponsored coverage, or the loss of the individual or group coverage of a person under whose policy they were enrolled, unless the loss is based on the individual's misrepresentation of a material fact affecting coverage or for fraud related to the discontinued health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for or adoption of the person for whom coverage is sought. For newborns, coverage must be effective from the moment of birth; for those adopted or placed for adoption, coverage must be effective from the date of adoption or placement for adoption, whichever occurs first;

(f) A situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual;

(g) Coverage is discontinued in a qualified health plan by the health benefit exchange pursuant to 45 C.F.R. 155.430 and the three month grace period for continuation of coverage has expired;

(h) Exhaustion of COBRA coverage due to failure of the employer to remit premium;

(i) Loss of COBRA coverage where the individual has exceeded the lifetime limit in the plan and no other COBRA coverage is available;

(j) If the person discontinues coverage under a health plan offered pursuant to chapter 48.41 RCW;

(k) Loss of coverage as a dependent on a group plan due to age.

(3) If the special enrollee had prior coverage, an issuer must offer a special enrollee each of the benefit packages available to individuals who enrolled during the open enrollment period within the same metal tier or level at which the person was previously enrolled. Any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package.

(a) A special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls during open enrollment.

(b) An issuer may limit a special enrollee who was enrolled in a catastrophic plan as defined in RCW 48.43.005 (8) to the plans available during open enrollment at either the bronze or silver level.

(c) An issuer may restrict a special enrollee whose eligibility is based on their status as a dependent to the same metal tier for the plan on which the primary subscriber is enrolled.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

NEW SECTION

WAC 284-170-430 Individual market special enrollment period requirements for qualified health plans. (1)

An issuer offering individual qualified health plans on the health benefit exchange must make the special enrollment opportunities, subject to the same terms and conditions specified in WAC 284-170-425, available to applicants who experience a qualifying event.

(2) In addition to the special enrollment qualifying events set forth in WAC 284-170-425, the following special enrollment opportunities must be made available for individual plans offered on the health benefit exchange:

(a) For qualified individuals who are an Indian, as defined by section 4 of the Indian Health Care Improvement Act, enrollment in a qualified health plan or change from one qualified health plan to another must be permitted one time per month, without requiring an additional special enrollment triggering event.

(b) If the applicant demonstrates to the health benefit exchange that the qualified health plan in which they are enrolled violated a material provision of the coverage contract in relation to the individual;

(c) If the applicant lost prior coverage due to errors by the health benefit exchange staff or the U.S. Department of Health and Human Services;

(d) If the applicant, or his or her dependent, who was not previously a citizen, national or lawfully present individual gains such status. For purposes of this subsection, "dependent" means a dependent as defined in RCW 48.43.005.

(e) If the applicant becomes newly eligible for cost-sharing reductions or advance payment of premium tax credits, or the individual's dependent becomes newly eligible. For purposes of this subsection (2)(e) and (f), "dependent" means dependent as defined in 26 CFR 54.9801-2;

(f) If the applicant or their dependent who is currently enrolled in employer sponsored coverage is determined newly eligible for advance payment of premium tax credit pursuant to the criteria established in 45 CFR 155.420 (d)(6)(iii);

(g) In addition to the special enrollment event in WAC 284-170-425 (2)(d), a change in the individual's residence as the result of a permanent move results in new eligibility for previously unavailable qualified health plans;

(3) If the applicant experiences a qualifying event and has coverage on a catastrophic health plan as defined in RCW 48.43.005 (8)(c)(i), the applicant's may be limited by the exchange to enrollment in a bronze or silver level plan.

(4) This section must not be interpreted or applied to preclude or limit the health benefit exchange's rights to automatically enroll qualified individuals based on good cause or as required by the U.S. Department of Health and Human Services.

(5) Issuers must comply with the special enrollment event requirements established for qualified health plans offered on the health benefit exchange in 45 C.F.R. 155.420. If the health benefit exchange establishes earlier effective dates for special enrollment periods, pursuant to 45 CFR 155.420, an issuer must include its plan documents and required disclosures an explanation of the effective date for special enrollment periods.

NEW SECTION

WAC 284-170-435 Duration, notice requirements and effective dates of coverage for individual market special enrollment periods. (1) Special enrollment periods must not be shorter than sixty days from the date of the qualifying event.

(2) The effective date of coverage for those enrolling in an individual health benefit plan through a special enrollment period is the first date of the next month after the premium is received by the issuer, unless one of the following exceptions applies:

(a) For those enrolling after the twentieth of the month, the issuer must begin coverage not later than the first date of the second month after the application is received. Issuers may establish an earlier effective date at their discretion;

(b) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption, as applicable, becomes the first effective date of coverage. The same requirement applies to foster children or children placed for foster care on qualified health plans;

(c) For special enrollment based on marriage or the beginning of a domestic partnership, and for special enrollment based on loss of minimum essential coverage, coverage must begin on the first day of the next month.

(3) For individual plans offered either on or off the health benefit exchange, an issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in the policy or certificate of coverage provided to an employer, plan sponsor or enrollee. The notice must be substantially similar to the model notice provided by the U.S. Department of Health and Human Services.

AMENDATORY SECTION (Amending Matter No. R 2010-16, filed 6/15/11, effective 7/16/11)

WAC 284-43-985 Enrollment of persons under age nineteen (1) For any individual health benefit plan offered after January 1, ~~((2014))~~ 2014, a carrier must conduct an open enrollment period for persons under age nineteen during ~~((two time periods each year))~~ the time frame applicable to the individual health plan market, and ((The first open enrollment period must occur)) from March 15th through April 30th of each year ~~((, and the second open enrollment period must occur from September 15th through October 31st)).~~

(2) A carrier must use the same method to establish the effective date of coverage for persons under age nineteen enrolling during either one of the open enrollment periods or a special enrollment period set forth in this rule that they use for any other individual health plan enrollee.

(3) ~~((A carrier must make a special enrollment period of not less than thirty-one days available to any person under age nineteen who experiences a qualifying event. A qualifying event means the occurrence of one of the following:~~

~~((a) The discontinuation for any reason of employer sponsored insurance coverage of a person under age nineteen or the person under whose policy they were enrolled;~~

~~((b) The loss of eligibility of person under age nineteen for medicaid or a public program providing health benefits;~~

~~((c) The loss of coverage for a person under age nineteen as the result of dissolution of marriage;~~

~~((d) The person under age nineteen or the person under whose policy they were enrolled changes residence, and the health plan under which they were covered does not provide coverage in that person's new service area;~~

~~((e) The person for whom coverage is sought was born, placed for adoption or adopted within sixty days of the application for enrollment. For newborns enrolled under an individual policy, coverage must be effective as of the moment of birth;~~

~~((f))~~ Nothing in this rule is intended to alter or affect the application of RCW 48.43.517.

(4) During the enrollment periods described in subsections (1) through ~~((3))~~ (2) of this section, or any other enrollment period, a carrier must not require a person under age nineteen applying for an individual health benefit plan to ~~((complete the standard health questionnaire designated under chapter RCW or otherwise))~~ provide evidence of health status ((insurability)).

~~((5))~~ ~~((A carrier may offer enrollment in an individual health benefit plan outside the open or special enrollment period, but must not require any evidence of insurability or completion of the standard health questionnaire if the applicant is a person under age nineteen.~~

~~((6))~~ A carrier must not limit the choice of individual plan for which a person under age nineteen may apply based on the applicant's age.

~~((7))~~ A carrier must prominently display on its web site information about open enrollment periods and special enrollment periods for persons under age nineteen.

(a) If a carrier elects to limit enrollment for persons under nineteen to the open enrollment periods or a special enrollment period triggered by a qualifying event, the carrier must:

(i) Explain that fact on its web site;

(ii) Promptly make application packets available to interested persons upon request, even if the request is made outside the open enrollment periods; and

(iii) Provide contact information for the Washington state high risk pool and the federally sponsored preexisting condition insurance pool—Washington.

(b) The web site information about special enrollment periods must provide a consumer with the ability to access or request and receive an application packet for enrollment at any time. The displayed information must also include details written in plain language explaining what constitutes a qualifying event for special enrollment.)

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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.

WSR 13-17-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-189—Filed August 8, 2013, 2:48 p.m., effective August 11, 2013]

Effective Date of Rule: August 11, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state's recreational share of spot shrimp in Marine Area 7 West is sufficient to allow the fishery to change from three days to seven days per week. In addition, the spot shrimp fishery in Marine Areas 4 and 5 will be closed at 9:00 p.m., September 15, 2013, to protect spot shrimp during the onset of the egg-bearing period. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 8, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

1) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section:

a. Effective immediately, until further notice, the portion of Marine Area 7 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, then west of a line from the bell buoy at the international boundary to Point Doughty on Orcas Island, then west of a line projected true north and south from the western tip of Crane Island, then west of a line projected from the southern tip of Shaw Island to the number 2 buoy at the entrance to Fisherman Bay:

i. Open daily to the harvest of all shrimp species until 9:00 p.m. September 15, 2013, after which it is closed to the harvest of all shrimp species.

b. Effective immediately, until further notice, the portion of Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, then east of a line projected true north and south from the western tip of Crane Island, then east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary:

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

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

2) Effective immediately, until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

3) It is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 6, except as provided for in this section:

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

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

4) Effective immediately until 9:00 p.m. September 15, 2013, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Area 5, are open to the harvest of all shrimp species.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. August 10, 2013:

WAC 220-56-32500I Shrimp—Areas and seasons. (13-131)

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

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

WSR 13-17-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-187—Filed August 8, 2013, 3:14 p.m., effective August 8, 2013, 3:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

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: A harvestable quota of salmon is available for the troll fleet. Chinook and coho catch rates have been lower than expected in the southern areas. An increase in the chinook open period limit in the southern areas and an increase in the coho open period limit in all areas is needed to ensure the coastal salmon troll fishery meets the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans and the National Marine Fisheries Service from an in-season call. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 8, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

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

August 9 through August 13, 2013;

August 16 through August 20, 2013;

August 23 through August 27, 2013;

August 30 through September 3, 2013;

September 6 through September 10, 2013; and

September 13 through September 17, 2013.

(2) Landing and possession limit of 150 Chinook and 80 coho per boat per each entire open period for the entire Catch Areas 1 and 2. Landing and possession limit of 40 Chinook and 80 coho per boat per each entire open period for the entire Catch Areas 3 and 4. Under no circumstance can a boat land more than a total of 150 Chinook or 80 coho in any open period.

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

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

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

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with area fished, total Chinook and halibut catch on board, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch on board, and destination. Any vessel with fish on board from either Area 3 or 4 may not possess more than 50 Chinook on board.

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

(8) Grays Harbor Control Zone is defined as the area inside a line from the Westport Lighthouse (46°53.18' N latitude; 124°07.01' W longitude) to Buoy #2 (46°52.42' N latitude; 124°12.42' W longitude) to Buoy #3 (46°55.00' N latitude; 124°14.48' W longitude) to the Grays Harbor north jetty (46°36.00' N latitude; 124°10.51' W longitude).

(9) Columbia Control Zone – This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4

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

(10) Mandatory Yelloweye Rockfish Conservation Area – This is defined as the area in Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(11) 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.

(12) 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 unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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 220-24-04000V All-citizen commercial salmon troll.
(13-162)

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 13-17-015 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-188—Filed August 8, 2013, 3:16 p.m., effective August 8, 2013, 3:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045 and 77.12.047.

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: Chinook catches in Areas 3 and 4 are approaching the chinook guideline. Changing the daily limit to only allow one chinook should keep the catch close to the guideline. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 8, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62000Z Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 1:** Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(2) **Catch Record Card Area 2:** Open seven days a week: Daily limit of 2 salmon; release wild coho.

(3) **Catch Record Card Area 3:** Immediately through August 9: Daily limit of 2 salmon plus 2 additional pink

salmon; release wild coho. August 10 until September 22 daily limit of 2 salmon only one of which can be a Chinook plus 2 additional pink salmon; release wild coho. September 28 through October 13: Daily limit of 2 salmon only one of which can be a Chinook plus 2 additional pink salmon; release wild coho. Opening restricted to the area north of 47 degrees 50 minutes 00 seconds N. lat. and south of 48 degrees 00 minutes 00 seconds N lat.

(4) **Catch Record Card Area 4:** Immediately through August 9: Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho salmon. Release Chinook salmon caught east of the Bonilla-Tatoosh line; and release chum salmon. August 10 until further notice: Daily limit of 2 salmon only one of which can be a Chinook salmon plus 2 additional pink salmon; release wild coho salmon. Release Chinook salmon caught east of the Bonilla-Tatoosh line; and release chum salmon.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000Y Coastal salmon—Saltwater seasons and daily limits. (13-181)

WSR 13-17-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-190—Filed August 9, 2013, 3:49 p.m., effective August 9, 2013, 3:49 p.m.]

Effective Date of Rule: Immediately upon filing.

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 77.04.020, 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 sales of fish caught in platform/hook and line fisheries in Zone 6 and the area immediately downstream of Bonneville Dam (consistent with MOUs/MOAs). Allows sales of fish caught in Yakama Nation tributary fisheries, consistent with Yakama Nation regulations. Harvest/ESA limits are expected to remain within the limits and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on August 8, 2013. 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: August 9, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Klickitat River and Drano Lake, except as provided in the following subsections. However, individuals who possess treaty fishing rights under the Yakama, Warm Springs, Umatilla, or Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Mainstem Columbia River Platform and Hook and Line upstream of Bonneville Dam

- a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)
- b. Season: 6 AM August 12, 2013, until further notice.
- c. Gear: Hoop nets, dip nets, set bag nets, and rod and reel with hook and line.
- d. Allowable sale: salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes.
- e. Standard sanctuaries in effect for this gear type.

2. Mainstem Columbia River Platform and Hook and Line downstream of Bonneville Dam

- a. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.
- b. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.
- c. Season: 6 AM August 12, 2013, until further notice.
- d. Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.
- e. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

3. Yakama Nation Tributary Fisheries

- a. Open Area: Columbia River Tributaries upstream of Bonneville Dam.
- b. Season: 6 AM August 12, 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.

c. Area: Drano Lake and Klickitat River.

d. Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

e. Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp which may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length may be kept for subsistence purposes.

4. 24-hour quick reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240, for all areas.

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

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

WSR 13-17-023

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-191—Filed August 9, 2013, 4:38 p.m., effective August 9, 2013, 4:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-30700I, 220-47-31100A, 220-47-41100R and 220-47-42800H; and amending WAC 220-47-307, 220-47-311, 220-47-411, and 220-47-428.

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 of fish and wildlife is in the process of filing permanent rules that are necessary to implement the commercial fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency 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 4, Amended 0, Repealed 4.

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

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

Date Adopted: August 9, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-30700I Closed areas—Puget Sound Salmon. Notwithstanding the provisions of WAC 220-47-307, effective immediately until further notice that portion of Puget Sound Salmon Management and Catch Reporting Area 10 within 500 feet of the eastern shore of Area 10 is closed to purse seines north of latitude 47°44'500"N.

NEW SECTION

WAC 220-47-31100A Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the areas and open periods indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
7B, 7C	6 AM - 9 PM 8/14 6 AM - 8 PM 8/21
8	6 AM - 7 PM daily 8/21, 8/22
8A	7 AM - 7 PM daily 8/19, 8/20
10 - limited participation 5 boats only	7 AM - 7 PM daily 8/15, 8/21, 8/22

NEW SECTION

WAC 220-47-41100R Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below and with the minimum mesh size indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods	Mesh Size
7B, 7C	7 PM - 8 AM daily 8/11, 8/13, 8/14, 8/18, 8/19, 8/20, 8/21	Minimum 7 inch

Open Areas	Open Periods	Mesh Size
8	5 AM - 10 PM daily 8/19, 8/20	Minimum 5 inch and maximum 5 1/2 inch
8A	5 AM - 10 PM daily 8/21, 8/22	Minimum 5 inch and maximum 5 1/2 inch
10 - limited participation 5 boats only	7 PM - 7 AM daily	Minimum 4 1/2 inch and maxi- mum 5 1/2 inch

Note: In Area 10 fisheries it is unlawful to use a net soak time of more than 90 minutes.

NEW SECTION

WAC 220-47-42800H Beach seine—Open periods. Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the areas and open periods indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
12A	7 PM - 7 AM daily 8/21, 8/22, 8/23

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. August 24, 2013:

- WAC 220-47-30700I Closed areas—Puget Sound salmon.
- WAC 220-47-31100A Purse seine—Open periods.
- WAC 220-47-41100R Gillnet—Open periods.
- WAC 220-47-42800H Beach seine—Open periods.

**WSR 13-17-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-193—Filed August 13, 2013, 11:53 a.m., effective August 13, 2013, 11:59 p.m.]

Effective Date of Rule: August 13, 2013, 11:59 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.020, 77.04.055, and 77.12.047.

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 2013 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Catch Area 25A to spot shrimp fishing, as the quota has been reached; and (2) adjusts the spot shrimp biweekly management limit in Shrimp Management Area 1A. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 13, 2013.

Philip Anderson
Director

NEW SECTION

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

(1) Shrimp pot gear:

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

i) All waters of the Discovery Bay Shrimp District are closed;

ii) All waters of Shrimp Management Areas 4 and 6 and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E and 25A are closed to the harvest of spot shrimp; and

iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all shrimp species other than spot shrimp.

(b) The spot shrimp catch accounting biweekly management periods are as follows:

i) Immediately through August 27, 2013.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200

pounds per biweekly management period, with the following exceptions:

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per biweekly management period in Shrimp Management Area 1C, or to exceed 600 pounds per biweekly management period in Catch Area 23B.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp.

i) Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure.

ii) Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) The following areas are open to Shrimp beam trawl gear, effective immediately, until further notice.

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

(b) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B.

(c) All waters of Catch Area 20A.

(3) It is unlawful to sell shrimp taken under this section to any person who is not a licensed Washington wholesale fish dealer.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. August 13, 2013:

WAC 220-52-05100F Puget Sound shrimp beam trawl fishery—Season. (13-173)

WSR 13-17-051 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-195—Filed August 14, 2013, 1:50 p.m., effective August 19, 2013, 6:00 a.m.]

Effective Date of Rule: August 19, 2013, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100N; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.020, 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 three weekly commercial gillnet fishing periods for treaty Indian fisheries in the mainstem Columbia River. The regulation also continues to allow the sales of fish caught in platform/hook and line fisheries in Zone 6 and the area immediately downstream of Bonneville Dam (consistent with memorandum of understandings/memorandum of agreements) and in Yakama Nation tributary fisheries, consistent with Yakama Nation regulations. Harvest/ESA limits are expected to remain within the limits and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on August 8 and 13, 2013. There is insufficient time to promulgate permanent regulations.

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

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

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

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

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

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

Date Adopted: August 14, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Klickitat River and Drano Lake, except as provided in the following subsections. However, individuals who possess treaty fishing rights under the Yakama, Warm Springs, Umatilla, or Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Mainstem Columbia River

a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)

b. Season: 6:00 a.m. August 19 to 6:00 p.m. August 21, 2013.

6:00 a.m. August 26 to 6:00 p.m. August 30, 2013.

6:00 a.m. September 3 to 6:00 p.m. September 7, 2013.

c. Gear: Gillnet. 8-inch minimum mesh restriction

d. Allowable sale: salmon, steelhead, shad, yellow perch, bass, walleye, catfish, and carp. Sturgeon may not be sold. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Sales of fish caught during the open period are allowed after the period concludes.

e. Standard sanctuaries in effect for this gear type.

2. Mainstem Columbia River Platform and Hook and Line upstream of Bonneville Dam

a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)

b. Season: open until further notice.

c. Gear: Hoop nets, dip nets, set bag nets, and rod and reel with hook and line.

d. Allowable sale: salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes.

e. Standard sanctuaries in effect for this gear type.

3. Mainstem Columbia River Platform and Hook and Line downstream of Bonneville Dam

a. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

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

c. Season: open until further notice.

d. Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

e. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Yakama Nation Tributary Fisheries

a. Open Area: Columbia River Tributaries upstream of Bonneville Dam.

b. Season: open 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.

c. Area: Drano Lake and Klickitat River.

d. Gear: Hoop nets, dip nets, set bag nets and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

e. Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp which may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length may be kept for subsistence purposes.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. August 19, 2013:

WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam. (13-190)

WSR 13-17-054

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-197—Filed August 15, 2013, 9:58 a.m., effective August 18, 2013]

Effective Date of Rule: August 18, 2013, one hour after official sunset.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Washington department of fish and wildlife estimates that sockeye available for harvest (those in excess of the natural spawning escapement goal of twenty-three thousand fish) will have been caught and removed from the lake by the end of Sunday August 18, 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 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 15, 2013.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective August 18, 2013, one hour after official sunset:

WAC 232-28-61900R Lake Wenatchee (13-172)

WSR 13-17-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-199—Filed August 15, 2013, 3:27 p.m., effective August 15, 2013, 3:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To prevent new and multiple wildfires in eastern Washington during this period of extreme fire danger; and to prevent the severe deterioration of air quality, which exacerbates the risk to life, health, and property.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-13-07000A, 232-13-07500A, 232-13-13000A, 232-13-14300A, 232-13-14500A and 232-13-15500A; and amending WAC 232-13-070 and 232-13-130.

Statutory Authority for Adoption: RCW 77.12.210.

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: Fire danger is exceedingly high in eastern Washington at this time. Numerous fires in the central part of the state have threatened extensive damage to homes, public facilities, businesses, public utilities, and infrastructure, impacting the life and health of our citizens throughout eastern Washington. Fires also have created an air-pollution problem effecting [affecting] citizens statewide. The department must thwart new and multiple fires by prohibiting many activities that could cause wildfires.

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 6, Amended 0, Repealed 6.

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

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

Date Adopted: August 15, 2013.

Nate Pamplin
for Philip Anderson
Director

NEW SECTION

WAC 232-13-07000B Fires and campfires (1) Notwithstanding the provisions of WAC 232-13-070, effective immediately until further notice, it is unlawful without a permit or approval from the director to build, start, or maintain fires or campfires in wildlife areas and access sites in Eastern

Washington (as defined in WAC 232-12-809) that are owned or controlled by the department of fish and wildlife. However, it is permissible in those wildlife areas and access sites to use personal camp stoves or lanterns that are fueled by liquid petroleum, liquid petroleum gas, or propane.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 232-13-07500B Smoking (1) Effective immediately until further notice, it is unlawful to smoke in wildlife areas and access sites in Eastern Washington (as defined in WAC 232-12-809) that are owned or controlled by the department of fish and wildlife, unless a person smokes in an enclosed vehicle, a building, or within a 3-foot diameter that is cleared down to mineral soil.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 232-13-13000B Firearms and target practicing (1) Notwithstanding the provisions of WAC 232-13-130, in wildlife areas and access sites in Eastern Washington (as defined in WAC 232-12-809) that are owned or controlled by the department of fish and wildlife, it is unlawful to discharge firearms for purposes of target practicing, except in designated target-shooting areas.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 232-13-14300B Chainsaws and other power equipment (1) Effective immediately until further notice, it is unlawful without a permit or approval from the director to operate a chainsaw or other equipment powered by an internal combustion engine in wildlife areas and access sites in Eastern Washington (as defined in WAC 232-12-809) that are owned or controlled by the department of fish and wildlife.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 232-13-14500B Welding or operating an acetylene or other torch with open flame. (1) Effective immediately until further notice, it is unlawful without a permit or approval from the director to weld or operate an acetylene torch or other open flame in wildlife areas and access sites in Eastern Washington (as defined in WAC 232-12-809) that are owned or controlled by the department of fish and wildlife.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 232-13-15500B Operating a motor vehicle off developed roadways. (1) Effective immediately until further notice, it is unlawful to operate a motor vehicle off developed roadways in wildlife areas and access sites in Eastern Washington (as defined in WAC 232-12-809) that are owned or controlled by the department of fish and wildlife. However, within those wildlife areas and access sites, it is permissible to park in an area devoid of vegetation within 10 feet of the roadway, and to park overnight in developed campgrounds and at trailheads.

(2) A violation of this section is an infraction punished under RCW 77.15.160 (5)(b).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 232-13-07000A Fires and campfires.
- WAC 232-13-07500A Smoking.
- WAC 232-13-13000A Firearms and target practicing.
- WAC 232-13-14300A Chainsaws and other power equipment.
- WAC 232-13-14500A Welding or operating an acetylene or other torch with open flame.
- WAC 232-13-15500A Operating a motor vehicle off developed roadways. (13-175)

WSR 13-17-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-198—Filed August 15, 2013, 3:39 p.m., effective August 15, 2013, 3:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

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: A harvestable quota of salmon is available for the troll fleet in Areas 1 and 2. Chinook and coho catch rates have been lower than expected in the southern areas. A closure of the northern areas is necessary to stay within the preseason cap on chinook and meet the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance

with preseason fishing plans and the National Marine Fisheries Service from an in-season call. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 15, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

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

August 16 through August 20, 2013;

August 23 through August 27, 2013;

August 30 through September 3, 2013;

September 6 through September 10, 2013; and

September 13 through September 17, 2013.

(2) Landing and possession limit of 150 Chinook and 80 coho per boat per each entire open period for the entire Catch Areas 1 and 2. Catch Areas 3 and 4 are closed to commercial salmon trolling. Under no circumstance can a boat land more than a total of 150 Chinook or 80 coho in any open period.

(3) The Grays Harbor and Columbia River Control Zones are closed.

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

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

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

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

(7) Grays Harbor Control Zone is defined as the area inside a line from the Westport Lighthouse (46°53.18' N latitude; 124°07.01' W longitude) to Buoy #2 (46°52.42' N latitude; 124°12.42' W longitude) to Buoy #3 (46°55.00' N latitude; 124°14.48' W longitude) to the Grays Harbor north jetty (46°36.00' N latitude; 124°10.51' W longitude).

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

(9) 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.

(10) 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 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 220-24-04000W All-citizen commercial salmon troll.
(13-187)

WSR 13-17-061 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-194—Filed August 15, 2013, 3:49 p.m., effective September 1, 2013]

Effective Date of Rule: September 1, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900E; 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: There is a large run of upriver bright hatchery fall chinook expected to return to the Snake River. Significant steelhead fisheries also occur in the area, and some hatchery fall chinook are expected to be caught during steelhead fishing. Retention of hatchery fall chinook is not expected to increase impacts to Endangered Species Act listed wild fall chinook. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 15, 2013.

Nate Pamplin
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619, effective September 1 through October 31, 2013, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) A person may fish for salmon upstream from the mouth of the Snake River, beginning at the south-bound lanes of the Highway 12 Bridge (near Pasco) to the Oregon State

line (located approximately 7 miles upstream of the mouth of the Grande Ronde River).

(a) Daily limit of three hatchery Chinook adults (24 inches in length and larger), and six hatchery jack Chinook (less than 24 inches). Minimum size for Chinook that can be retained is 12 inches.

(b) Barbless hooks required, and anglers must stop fishing for salmon for the day once they have retained 3 hatchery steelhead (regardless of whether the salmon daily limit has been retained).

(c) All Chinook and steelhead with unclipped adipose fins must be immediately released unharmed. Anglers cannot remove any Chinook or steelhead from the water unless it is retained as part of the daily bag limit.

(d) Retained adipose fin-clipped fish must have a healed scar at the location of the missing fin.

REPEALER

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

WAC 232-28-61900E Exceptions to statewide rules—
Snake River.

WSR 13-17-062

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 15, 2013, 3:57 p.m., effective September 1, 2013]

Effective Date of Rule: September 1, 2013.

Purpose: Amending WAC 388-823-1010, 388-832-0085, 388-832-0130, 388-827-0145, and 388-828-9140. The purpose for these emergency rules is to allow the developmental disabilities administration (DDA) to immediately begin enrollment of individuals onto the individual and family services (IFS) program who have been waiting for services and supports. These changes will enable families to continue caring for their family members in their own homes and help stabilize families and individuals who are experiencing increased caregiving stress and crisis by providing respite from their caregiving duties.

Citation of Existing Rules Affected by this Order: Amending WAC 388-823-1010, 388-832-0085, 388-832-0130, 388-827-0115, 388-827-0145, and 388-828-9140.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state budget (3ESSB 5034, section 205(d)).

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

Reasons for this Finding: There are approximately two thousand five hundred individuals who do not receive any paid services from the DDA who have asked for help and have been put on a waitlist until funding becomes available to provide them with services and supports. These changes will provide immediate funding and eligibility to enable families to continue caring for family members in their own homes and help stabilize families who are experiencing increased caregiving stress and crisis by providing respite and support for families and individuals. The legislature has directed DDA to use historical data about award amounts and utilization to determine new award amounts for each service priority level so that DDA can help more individuals and families with the funds allocated in the budget.

In 3ESSB 5034, section 205(d): \$6,244,000 of the general fund - state appropriation for fiscal year (FY) 2014 and \$6,244,000 of the general fund - state appropriation for FY 2015 are appropriated solely for the IFS program. Within these amounts, the department shall expand the current number of clients receiving services and focus on extending services to individuals with developmental disabilities who are not otherwise receiving paid services from the department.

Budget notes in SC3 IFS Expansion describe legislative intent on how DDA is to implement 3ESSB 5034, section 205(d): In order to increase the number of clients served by the IFS program, the DDA must utilize past experience about award utilization to guide the number of authorized awards, and must change the maximum dollar amount awarded to each service priority level. Clients who are not receiving paid services from DDA may be added to the IFS program during the 2013-2015 biennium. Corresponding changes must be made to the state supplementary payment (SSP) program to ensure that award levels are consistent for clients in the IFS program and clients receiving SSP in lieu of IFS.

Fulfilling the intent of the legislative [legislature]: The DDA is fulfilling the legislative intent by making these changes:

1. Reducing IFS award amounts to sixty percent of the current (old) amount in rule:
 - o The department's analysis has determined that DDA returned approximately \$4 million dollars in unspent IFS funds for the 2011-2013 biennium. This money would have been expended if clients used one hundred percent of their annual award.

Number of clients and the percentage of the award they used in plan year

IFS Level	# of Clients	Current Award	0%	1% to 20%	21% to 40%	41% to 60%	61% to 80%	81% to 100%
Level 1	141	2000	76	24	12	10	6	13
Level 2	319	3000	144	60	42	32	18	23

IFS Level	# of Clients	Current Award	0%	1% to 20%	21% to 40%	41% to 60%	61% to 80%	81% to 100%
Level 3	485	4000	176	108	74	65	28	34
Level 4	203	6000	74	39	28	24	20	18
Total:	1148		470	231	156	131	72	88

IFS Level	Old Award	New Award
Level 1	\$2,000	\$1,200
Level 2	\$3,000	\$1,800
Level 3	\$4,000	\$2,400
Level 4	\$6,000	\$3,600

2. Expand the current number of clients receiving IFS or SSP in lieu of IFS:

- o The unspent portion will now be used to increase the number of individuals and families served by the IFS program.
- o By reducing the award amounts to what is actually being spent, at all levels, those unspent dollars will be used to provide help to some of those who are not now receiving any paid assistance from DDA.
 - It is anticipated an additional one thousand five hundred individuals could be enrolled in the IFS or SSP in lieu of IFS programs who are not now receiving any DDA paid services.
- o The chart below illustrates the number of clients/families receiving the amount of awards in the plan year prior to April 2013. Only fifty-five percent of IFS expenditures were for respite.

Number of clients enrolled in IFS program or receiving Emergency IFS funds by plan year and award level.	2009	2010	2011	2012
Level 1 (\$2,000)	485	375	249	150
Level 2 (\$3,000)	608	556	440	298
Level 3 (\$4,000)	643	603	573	431
Level 4 (\$6,000)	210	174	226	186
Total Number of Clients	1946	1708	1488	1065

3. Provide support as expediently as possible:

- o To permit DDA to provide more immediate assistance to individuals age eighteen or older we are adjusting the eligibility determination criteria in WAC 388-823-1010 (3)(a). This will eliminate the need to complete an eligibility review for individuals who had an eligibility determination after May 31, 2005.
 - Without this change DDA case managers would be required to conduct a new eligibility determination assessment for hundreds of individuals before they could be considered for an IFS award amount. The process would result in

months of delays before DDA could help support individuals and families.

4. SSP amounts:

- o Corresponding changes to the SSP program WAC are also being made to ensure that award levels are consistent for clients in the IFS program and clients receiving SSP in lieu of IFS.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, 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 5, Repealed 0.

Date Adopted: August 15, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability? (1) Your eligibility can be reviewed at any time if your eligibility effective date is prior to July 2005 and you are age ten or older and were eligible under a condition of developmental delay or Down syndrome.

(2) Your eligibility will be reviewed at age seventeen with termination occurring no sooner than your eighteenth birthday if your most current eligibility determination was at sixteen or younger under mental retardation, cerebral palsy, epilepsy, autism, another neurological condition, or other condition similar to mental retardation.

(3) DDD will review your eligibility prior to the initial authorization of any paid service from DDD when you are not currently receiving paid services and:

(a) You are age eighteen or older and your most current eligibility determination (~~is more than twenty-four months old~~) was made prior to June 1, 2005; or

(b) You are age four but under age eighteen and your eligibility was established under the eligible conditions of developmental delay or Down syndrome and your eligibility effective date is prior to July 2005.

(4) DDD will review your eligibility if DDD discovers:

(a) The evidence used to make your most recent eligibility determination completed in 1992 or later appears to be insufficient, in error, or fraudulent; or

(b) New diagnostic information becomes available that does not support your current eligibility and you are under the age of eighteen.

AMENDATORY SECTION (Amending WSR 11-17-068, filed 8/16/11, effective 9/16/11)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allowance,

(viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

(9) ~~((As of December 31, 2010, you met))~~ You meet the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS) ~~(; you had an IFS service level of three or four, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to January 1, 2011, or you received))~~ and you are currently receiving SSI payments or you would receive SSI payments if you did not receive Social

Security Title II benefits as a disabled adult child (~~prior to January 1, 2011 and would have been eligible for SSI if you did not receive these benefits~~)).

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

AMENDATORY SECTION (Amending WSR 06-24-074, filed 12/4/06, effective 1/4/07)

WAC 388-827-0145 How much money will I receive?

The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) (~~For family support services, refer to WAC 388-825-200 through 388-825-256.~~) If you receive SSP in lieu of individual and family services you will receive the following amounts based on your DDA assessment:

<u>If your individual and family services score is:</u>	<u>The award level will be</u>	<u>The amount of your award will be</u>
<u>0 - 60</u>	<u>Not eligible</u>	<u>Not eligible</u>
<u>61-240</u>	<u>Level 1</u>	<u>\$1,200</u>
<u>241-336</u>	<u>Level 2</u>	<u>\$1,800</u>
<u>337-527</u>	<u>Level 3</u>	<u>\$2,400</u>
<u>528 or more</u>	<u>Level 4</u>	<u>\$3,600</u>

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum yearly award for traditional family support or family support opportunities may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the traditional family support program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.

(i) Need is based on your service need level and whether you receive medicaid personal care as specified in WAC 388-825-254.

(ii) If your need changes, the amount of your SSP will be adjusted accordingly.

(c) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the family support opportunity program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.

(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.

(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9140 How does DDD determine the amount of your individual and family service award?

DDD uses the following table to determine the amount of your individual and family services award:

<u>If your individual and family services score is:</u>	<u>The award level will be</u>	((Then)) <u>The amount of your award is up to:</u>
<u>0 to 60</u>	<u>Not eligible</u>	<u>No Award</u>
<u>61 to 240</u>	<u>Level 1</u>	\$(2000)) <u>1,200</u>
<u>241 to 336</u>	<u>Level 2</u>	\$(3000)) <u>1,800</u>
<u>337 to 527</u>	<u>Level 3</u>	\$(4000)) <u>2,400</u>
<u>528 or more</u>	<u>Level 4</u>	\$(6000)) <u>3,600</u>

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0085 When there is state funding available to enroll additional clients (~~(in))~~ on the IFS program, how will DDD select from the clients on the IFS program request list?

When there is state funding available for additional IFS participants, DDD (~~(may))~~ will enroll participants based on (~~the following considerations:~~

(1) ~~Clients who have requested residential habilitation center (RHC) respite, emergency services, or residential placement, prior to June 30, 2007.~~

(2) ~~Clients with the highest scores in caregiver and behavior status on the mini assessment.~~

(3) ~~Clients who have been on the IFS program request list the longest))~~ priorities established by the legislature or from the date the client was placed on the IFS request list.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0130 What is the amount of the IFS program allocation my family is going to receive?

The DDD assessment, described in chapter 388-828 WAC, will

determine your level of need. The IFS program annual allocations are ~~((as follows:~~

- ~~(1) Level 1 – Up to \$2,000;~~
- ~~(2) Level 2 – Up to \$3,000;~~
- ~~(3) Level 3 – Up to \$4,000; and~~
- ~~(4) Level 4 – Up to \$6,000))~~ identified in 388-828-9140.

WSR 13-17-063
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 15, 2013, 4:12 p.m., effective August 15, 2013, 4:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 392-121-182 requires updating to clarify questions on current requirements and to address changes as a result of passage of ESB [ESSB] 5946.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-182 Alternative learning experience requirements.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The changes include the following:

- Removes the rules around differential funding (subsection (8)).
- Removes all time requirements from the weekly contact rules.
- Allows schools to forgo direct personal contact as a part of the monthly evaluation for students making satisfactory progress after at least one month.
- Creates the role of a "school-based support staff" that districts may use to fulfill the requirements for students enrolled in online courses.
- Other changes and adjustments to streamline the implementation, recordkeeping, and reporting for alternative learning experience programs.

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 1, 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 0, Repealed 0.

Date Adopted: August 15, 2013.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 12-17-107, filed 8/20/12, effective 9/20/12)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience, including an alternative learning experience online program as defined in RCW 28A.150.262. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

~~(A) ((A course or a set of courses developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student may enroll part-time in an alternative learning experience. Such enrollment is subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC; and~~

~~(B) The student pursues the requirements of the written student learning plan))~~ Provided in whole or in part independently from a regular classroom setting or schedule, but ((the learning plan)) may include some components of direct instruction; ((and

~~(C) The student's learning is))~~ (B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's policy and this chapter.

(ii) The ~~((broad))~~ categories of alternative learning experience ~~((programs include, but))~~ courses are ~~((not limited to))~~:

(A) "Online ~~((programs))~~ course" means an alternative learning experience course that has the same meaning as ~~((defined))~~ provided in RCW ~~((28A.150.262;~~

(B) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and

~~(C) Contract based learning programs;~~

~~(b)) 28A.250.010.~~

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work.

(c) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

~~((e) "Written student learning plan" means a written plan for learning that is developed and approved by a certificated teacher and defines the requirements of an individual student's alternative learning experience. The written student learning plan must include at least the following elements:~~

~~(i) A beginning and ending date for the student's alternative learning experience;~~

~~(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;~~

~~(iii) A description of how weekly direct personal contact requirements will be fulfilled;~~

~~(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;~~

~~(v) Identification of the certificated teacher responsible for each course included as part of the plan;~~

~~(vi) Identification of all instructional materials that will be used to complete the learning plan; and~~

~~(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;~~

~~(viii) Identification of whether each alternative learning experience course meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district. For each high school alternative learning experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.))~~

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

~~(e) "~~((Satisfactory progress))~~ In-person instructional contact" means face-to-face contact between a certificated teacher ~~((has determined that a student's progress toward achieving the specific))~~ and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:~~

~~(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning ~~((goals and performance objectives specified))~~ activities or requirements identified in the written student learning plan ~~((is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher)); and~~~~

~~(ii) Related to an alternative learning experience course identified in the written student learning plan.~~

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher.

At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of ~~((direct personal))~~ weekly contact for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which ~~((direct personal))~~ weekly contact is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session;

(j) "School-based support staff" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

~~((H))~~ (L) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

~~((ii))~~ Related to an alternative learning experience course identified in the written student learning plan. Synchronous

digital instructional contact may be accomplished in a group setting between the teacher and multiple students.

(i) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(j) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and)

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan. ((In-person instructional contact may be accomplished in a group setting between the teacher and multiple students.

(k) "School week")) (m) "Total weekly time" means ((any seven-day calendar period starting with Sunday and continuing through Saturday)) the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan.

(n) "Written student learning plan" means a written plan for learning that includes at least ((three days when a district's schools are in session)) the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level

expectations and any other academic goals, objectives, and learning requirements defined by the school district.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact(=

~~(i) Direct personal contact~~) with a certificated teacher at least once a school week(=) until the student completes all course objectives or otherwise meets the requirements of the learning plan(=

~~(ii))~~;

(i) Direct personal contact; or

(ii) In-person instructional contact ((according to the following time requirements:

(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;

(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and

(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week); or

~~((iii)) For students whose written student learning plan includes only online courses as defined by RCW 28A.250-010,)) (iii) Synchronous digital instructional contact ((according to the following time requirements:~~

(A) Fifteen minutes per school week for students whose learning plan includes an estimate of five hours per school week or less;

(B) Thirty minutes per school week for students whose learning plan includes an estimate of more than five hours per week but less than sixteen hours per week; and

(C) One hour for students whose learning plan includes an estimate of more than fifteen hours per week)).

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher ~~(and)~~ or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student(=) with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

~~((iii))~~ (v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

~~((iv))~~ (vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

~~((v))~~ (viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) Required school district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies

authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts that offer alternative learning experience ~~(s)~~ courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience ~~(s)~~ courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience ~~(s)~~ courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience ~~((program))~~ course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience ~~(s)~~ courses or course work must be consistent in quality with those available to the district's overall student population.

(g) Instructional materials used in alternative learning experience ~~(s)~~ courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in

alternative learning experience ~~((programs))~~ courses or course work if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. ~~((However,))~~ Nothing ((in this subsection)) herein shall:

(i) Prohibit((s)) school districts from contracting with school district employees to provide services or experiences to students; or

(ii) Prohibit school districts from contracting with online providers approved by the office of the superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Requires school districts that contract with school district employees to provide services or experiences to students, or with online providers approved by the office of the superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district that provides ~~((one or more))~~ alternative learning experience ~~(s)~~ courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communica-

tion distributed by the school district or the school district contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

~~(n) ((State-funded alternative learning experience online programs must be accredited by the Northwest Accreditation Commission or another national, regional, or state accreditation program listed by the office of superintendent of public instruction on its web site.~~

~~(o))~~ School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's alternative learning experience courses by the office of the state auditor.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent

must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(ii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in the subsequent month's enrollment count (~~for the month of the evaluation that showed the lack of satisfactory progress~~).

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Students who graduate in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar must identify a May graduation date.

(ii) The students' written student learning plan must include an ending date that is the last day of school for seniors in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the

coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

~~(8) ((Differentiated funding: For the 2011-12 and 2012-13 school year, school districts reporting student enrollment pursuant to the requirements of this section shall generate and receive funding at eighty percent of the formula funding that would have been generated under the state basic education formula for such enrollment unless the following conditions are met, in which case school districts shall generate and receive funding at ninety percent of the formula funding:~~

~~(a) For alternative learning experience online programs under RCW 28A.150.262, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives either:~~

~~(i) Face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection; or~~

~~(ii) Synchronous digital instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection if the student's written student learning plan includes only online courses as defined by RCW 28A.250.010.~~

~~(b) For all other types of alternative learning experience programs, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives face-to-face, in-person instructional contact time from a certificated teacher according to the criteria identified in (d) of this subsection;~~

~~(c) The instructional contact time must be:~~

~~(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and~~

~~(ii) Related to an alternative learning experience course identified in the written student learning plan;~~

~~(d) Using the estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan, as required in subsection (3)(c)(ii) of this section:~~

~~(i) For students whose learning plan includes an estimate of five hours per school week or less, on average at least fifteen minutes of contact per school week during each month of reported enrollment for the student;~~

~~(ii) For students whose learning plan includes an estimate of more than five hours per school week but less than sixteen hours per school week, on average at least thirty minutes of contact per school week during each month of reported enrollment for the student;~~

~~(iii) For students whose learning plan includes an estimate of more than fifteen hours per school week, on average at least one hour of contact per school week during each month of reported enrollment for the student.~~

~~(9)) Assessment requirements:~~

~~(a) All students enrolled in alternative learning experience((s)) courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.~~

~~(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.~~

~~(c) Students enrolled in nonresident alternative learning experience ((schools, programs, or)) courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.~~

~~((10) Program evaluation requirements: School districts offering alternative learning experiences must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation must follow a continuous~~

improvement model, and may be implemented as part of the school district's school improvement planning efforts.

~~((11))~~ (9) Reporting requirements:

(a) Each school district offering alternative learning experience~~(s)~~ courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experience~~(s)~~ courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experience~~(s)~~ courses or course work must ~~((report))~~ annually report the following to the superintendent of public instruction ~~((on the types of programs and course offerings subject to this section. The annual report shall identify))~~:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program~~((The annual report shall)); and~~

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

~~((12))~~ (d) Each school district offering alternative learning experience courses must report all required information to the office of the superintendent of public instruction's Comprehensive Education Data and Research System under RCW 28A.300.500. Beginning with the 2013-14 school year, school districts must designate alternative learning experience courses as such when reporting course information to the Comprehensive Education Data and Research System.

(10) Documentation and record retention requirements: School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection ~~((11))~~ (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and syn-

chronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of ~~((direct personal))~~ contact must include the date of the ~~((direct personal))~~ contact, the method of communication by which the ~~((direct personal))~~ contact was accomplished, and documentation to support the subject of the communication.

~~((ii) For students receiving either in-person instructional contact time or synchronous digital instructional contact time, evidence may include classroom attendance records;))~~

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section~~((; and~~

~~((j) Evidence of face-to-face contact required in subsection (8)(a) of this section)).~~

WSR 13-17-068

EMERGENCY RULES

DEPARTMENT OF

EARLY LEARNING

[Filed August 16, 2013, 9:27 a.m., effective August 17, 2013]

Effective Date of Rule: August 17, 2013.

Purpose: To revise chapters 170-295, 170-296A, and 170-297 WAC to align them with chapter 246-110 WAC as recently amended by the department of health (DOH) regarding contagious diseases.

Citation of Existing Rules Affected by this Order: Amending WAC 170-295-0010, 170-295-1080, 170-295-3010, 170-295-3030, 170-295-7060, 170-296A-2250, 170-296A-3200, 170-296A-3210, 170-296A-4850, 170-297-2250, 170-297-3200, 170-297-3210, and 170-297-4850.

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: Emergency rules are necessary for the preservation of public health because DOH has amended its definition of communicable disease to eliminate diseases and add new ones, and to substitute the term "contagious" for "communicable." Alignment of department of early learning's licensing rules with these changes is necessary in order to ensure that providers know what diseases are identified concerns based on the latest science, and to ensure they have clarity regarding terminology.

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 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 13, Repealed 0.

Date Adopted: August 16, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-09-060, filed 4/17/12, effective 5/18/12)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Anti-bias" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"Capacity" means the maximum number of children that a licensee is authorized to have on the premises of the child care at any one time.

"Center" means the same as **"child care center."**

"Certification" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see **"Tribal certification"**).

"Child abuse or neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"Child-accessible" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"Child care center" means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"Clean" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

"((Communicable) Contagious disease" means ((a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface))) as provided in WAC 246-110-010.

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may

include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing a licensee by law to operate a child care center and certifying that the licensee meets the minimum requirements under licensure.

"Licensee" or **"you"** means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children a licensee can be licensed for based on the amount of useable space (square footage) in the licensee's center. The licensee may be licensed for less than the maximum potential capacity. A licensee may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or **"moisture resistant"** means a surface incapable of being penetrated by water or liquids.

"Nonexpiring license" or **"nonexpiring full license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"Staff" means a child care giver or group of child care givers employed by the licensee to supervise children served

at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"Supervised access" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"Toddler" means a child twelve months through twenty-nine months of age.

"Terminal room cleaning" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a ((communicable)) contagious disease before it is occupied by another person.

"Tribal certification" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"Unsupervised access" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

"Useable space" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-1080 What topics must my new staff orientation include? You must have an orientation system in place to train each new employee and volunteer about program policies, practices, philosophies and goals. This training must include, but is not limited to, the program policies and practices listed in this chapter such as:

(1) Minimum licensing requirements;

(2) Planned daily activities and routines;

(3) Child guidance and behavior management methods;

(4) Child abuse and neglect prevention, detection, and reporting policies and procedures;

(5) Health policies and procedures;

(6) ((Communicable)) Contagious disease recognition and prevention;

(7) Bloodborne pathogens;

(8) Fire prevention, disaster plan and safety procedures;

(9) Special health and developmental needs of the individual child;

- (10) Personnel policies, when applicable;
- (11) Limited restraint techniques;
- (12) Cultural relevancy; and
- (13) Age and developmentally appropriate practices and expectations for the age group the staff will work with.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3010 What kind of health policies and procedures must I have? (1) You must have written health policies and procedures that are:

- (a) Written in a clear and easily understood manner;
- (b) Shared with all new staff during orientation;
- (c) Posted for staff and families to review; and
- (d) Reviewed, signed and dated by a physician, a physician's assistant or registered nurse when you change your policies and procedures or type of care that you provide, or at least every three years when you are due for relicensing. (For example, if you go from caring for children from twelve months and older to caring for infants, you must update your health policies and procedures and have them reviewed and signed.)

(2) Your health policies and procedures must have information on how you plan to:

(a) Provide general cleaning of areas including but not limited to bathrooms, floors, walls, and doorknobs;

(b) Clean and sanitize areas including but not limited to food contact surfaces, kitchen equipment, diapering areas, toys, toileting equipment and areas, equipment that might be shared with several children such as sleep mats, cribs or high chairs;

(c) Prevent, manage and report (~~(communicable)~~) contagious diseases;

(d) Handle minor injuries such as nosebleeds, scrapes and bruises;

(e) Provide first aid;

(f) Screen children daily for illnesses;

(g) Notify parents that children have been exposed to infectious diseases and parasites;

(h) Handle minor illnesses;

(i) Handle major injuries and medical emergencies that require emergency medical treatment or hospitalization;

(j) Manage medication;

(k) Assist with handwashing and general hygiene including diapering and toileting;

(l) Handle food;

(m) Provide nutritious meals and snacks;

(n) Respond during any disasters;

(o) Care for children that may have special needs;

(p) Care for infants and obtain infant nurse consultation (if licensed for four or more infants); and

(q) Place infants to sleep on their backs to reduce the risk of sudden infant death syndrome (SIDS).

(3) Your health policies and procedures must have information on when you plan to:

(a) Require ill children to stay home and for how long;

(b) Allow the ill child to return; and

(c) Call a parent to pick up their child and how you will care for the child until the parent arrives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3030 When is a child or staff member too ill to be at child care? (1) Your staff must check all children for signs of illness when they arrive at the center and throughout the day.

(2) You must exclude children and staff with the following symptoms from care:

(a) Diarrhea (three or more watery stools or one bloody stool within twenty-four hours);

(b) Vomiting (two or more times within twenty-four hours);

(c) Open or oozing sores, unless properly covered with cloths or with bandages;

(d) For suspected (~~(communicable)~~) contagious skin infection such as impetigo, pinkeye, and scabies: The child may return twenty-four hours after starting antibiotic treatment;

(e) Lice or nits; and

(f) Fever of 100 degrees Fahrenheit or higher and who also have one or more of the following:

(i) Earache;

(ii) Headache;

(iii) Sore throat;

(iv) Rash; or

(v) Fatigue that prevents participation in regular activities.

(3) Children and staff who have a reportable disease may not be in attendance at the child care center unless approved by the local health authority.

(4) You must not take ear or rectal temperatures. Oral temperatures can be taken for preschool through school age if single use disposable covers are used over the thermometer.

(5) When a child becomes ill or injured while in your care, you must:

(a) Keep a confidential, individualized, written record in the child's file that includes the:

(i) Date of an illness or injury;

(ii) Treatment provided while in care; and

(iii) Names of the staff providing the treatment.

(b) Provide a copy of the illness or injury report to the parent; and

(c) Keep a current, written incident log listing date of illness or injury, the child's name, names of staff involved, and a brief description of the incident for tracking and analysis.

(6) You must notify parents in writing when their children have been exposed to infectious diseases or parasites. The notification may consist of either a letter to parents or posting a notification for parents in a visible location.

(7) You are a mandated disease reporter to the health department per WAC 246-101-415. You can obtain a list of reportable diseases, time frames for reporting and reporting phone numbers from your local health department.

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

WAC 170-295-7060 What injuries and illnesses or child abuse and neglect must I report? You or your staff must report immediately:

(1) A death or a serious injury or illness that requires medical treatment or hospitalization of a child in care must be reported by telephone and in writing to the parent, licensor, and child's social worker, if the child has a social worker;

(2) Any instance when you or your staff have reason to suspect the occurrence of any physical, sexual, or emotional child abuse or child neglect, child endangerment, or child exploitation as required under described in chapter 26.44 RCW. You may make a report by calling the statewide number at 1-800-562-5624 or 1-866-ENDHARM; and

(3) An occurrence of food poisoning or reportable (~~(communicable)~~) contagious disease, as required by the state board of health to the local public health department and to the licensor, by telephone.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2250 Reporting incidents to a child's parent or guardian and the department. The licensee must report to a child's parent or guardian and the department:

(1) Immediately:

(a) Any incident reported under WAC 170-296A-2200, after calling 911;

(b) Any incident reported under WAC 170-296A-2225, after calling 911 and Washington poison center;

(c) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; or

(d) Use of physical restraint with a child.

(2) Within twenty-four hours:

(a) Their child's injury or other health concern that does not require professional medical treatment (report to parent only);

(b) Change in child care staff, including serious illness or incapacity of the licensee that may impact child care staffing;

(c) Additions to the household of persons sixteen years old or older;

(d) Change in the licensee's phone number or e-mail; or

(e) Their child's exposure to a (~~(communicable)~~) contagious disease from the list in WAC (~~(170-296A-3210)~~) 246-110-010; and

(3) The licensee's plans to move, as soon as the licensee plans to move. See WAC 170-296A-1475.

AMENDATORY SECTION (Amending WSR 12-21-050, filed 10/12/12, effective 11/12/12)

WAC 170-296A-3200 Health plan. The licensee must have a written health plan. The health plan must include:

(1) (~~(Communicable)~~) Contagious disease procedures and exclusion of ill persons under WAC 170-296A-3210;

(2) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;

(3) Medication management under WAC 170-296A-3315 through 170-296A-3550;

(4) Injury treatment under WAC 170-296A-3575 through 170-296A-3600;

(5) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675;

(6) Caring for children with special health needs under WAC 170-296A-0050;

(7) Cleaning, sanitizing, and disinfecting procedures;

(8) A bloodborne pathogens plan under WAC 170-296A-1850; and

(9) Notifying the health department when a licensee, staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as required under WAC 170-296A-2325.

AMENDATORY SECTION (Amending WSR 12-21-050, filed 10/12/12, effective 11/12/12)

WAC 170-296A-3210 (~~(Communicable)~~) Contagious disease procedure. (1) When the licensee becomes aware that he or she, a household member, staff person or child in care has been diagnosed with any of the (~~(following communicable diseases:~~

Diseases	Also known as:
Chickenpox	Varicella
Conjunctivitis (bacterial)	Pink eye
Diphtheria	
E. coli infection	
Giardiasis	
Hepatitis A virus	
Invasive haemophilus-influenza disease (except otitis media)	
Measles	
Meningitis (bacterial)	Meningococcal meningitis
Mumps	
Pertussis	Whooping cough
Rubella	German measles
Salmonellosis	Salmonella or "food poisoning"
Shigellosis	Shigella
Tuberculosis (active)	TB

(~~(1)~~) contagious diseases described in WAC 246-110-010, the licensee must, within twenty-four hours notify:

(a) The local health jurisdiction or DOH, except notice is not required for a diagnosis of chickenpox or conjunctivitis;

(b) The department; and

(c) Parents or guardians of each of the children in care.

(2) The licensee must follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.

(3) The licensee's health plan must include provisions for excluding or separating a child, staff person, or household member with (~~(communicable)~~) contagious disease as described in (~~(subsection (1) of this section)~~) WAC 246-110-010 or any of the following:

(a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:

- (i) Earache;
- (ii) Headache;
- (iii) Sore throat;
- (iv) Rash; or

(v) Fatigue that prevents the individual from participating in regular activities.

(b) Vomiting that occurs two or more times in a twenty-four hour period;

(c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period;

(d) Rash not associated with heat, diapering, or an allergic reaction; or

(e) Drainage of thick mucus or pus from the eye.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4850 Pet/animal health and safety.

Pets or other animals that have contact with children must:

- (1) Have current immunizations for ~~((communicable))~~ contagious diseases if applicable;
- (2) Show no signs of disease, worms or parasites; and
- (3) Be nonaggressive.

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

WAC 170-297-2250 Reporting incidents to a child's parent or guardian and the department. (1) The licensee or designee must report to a child's parent or guardian and the department:

(a) Immediately:

(i) Any incident reported under WAC 170-297-2200, after calling 911;

(ii) Any incident reported under WAC 170-297-2225, after calling 911 and Washington poison center;

(iii) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; and

(iv) Use of physical restraint on a child;

(b) Within twenty-four hours:

(i) Injury or other health concern to a child that does not require professional medical treatment (report to parent only);

(ii) Change in child care staff that may impact child care staffing;

(iii) Change in the program phone number or e-mail; and

(iv) Child's exposure to a reportable ~~((communicable))~~ contagious disease from the list in WAC 246-110-010~~((4))~~.

(2) The licensee must notify the department when liability insurance coverage terminates within thirty days of termination.

(3) The licensee must give a child's parent or guardian written notice when liability insurance coverage lapses or is terminated within thirty days of lapse or termination.

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

WAC 170-297-3200 Health plan. (1) A written health plan must be in place for the program and contain the following:

(a) ~~((Communicable))~~ Contagious disease notification under WAC 170-297-3210;

(b) Exclusion of ill person under WAC 170-297-3210;

(c) Exclusion of person diagnosed with a notifiable condition under WAC 170-297-2325;

(d) Immunization tracking under WAC 170-297-3250 through 170-297-3300;

(e) Medication management under WAC 170-297-3315 through 170-297-3550;

(f) Medication storage under WAC 170-297-3325;

(g) Injury treatment under WAC 170-297-3575 through 170-297-3600;

(h) Abuse and neglect protection and training under WAC 170-297-6275;

(i) Caring for children with special needs under WAC 170-297-0050;

(j) Care for animals on the premises;

(k) Handwashing and hand sanitizers under WAC 170-297-3625 through 170-297-3650;

(l) Food and food services;

(m) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, and toileting equipment, will be cleaned and sanitized; and

(n) Cleaning and sanitizing laundry under WAC 170-267-3850.

(2) The health plan must be reviewed and dated by a physician, a physician's assistant, or a registered nurse and submitted to the department every three years.

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

WAC 170-297-3210 ~~((Communicable))~~ Contagious disease procedure. (1) When a licensee or program staff person becomes aware that any program staff person or child in care has been diagnosed with any of the ~~((communicable))~~ contagious diseases as defined in WAC 246-110-010, the licensee or designee must:

(a) Notify parents or guardians of each of the children in care within twenty-four hours; and

(b) Follow the health policy before providing care or before readmitting the program staff person or child into the child care.

(2) The licensee's health policy must include provisions for excluding or separating a child or program staff person with a ~~((communicable))~~ contagious disease. Children with any of the following symptoms must be excluded from care until guidelines permit readmission:

(a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:

(i) Earache;

(ii) Headache;

(iii) Sore throat;

- (iv) Rash; or
- (v) Fatigue that prevents the individual from participating in regular activities;
- (b) Vomiting that occurs two or more times in a twenty-four hour period;
- (c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period; or
- (d) Drainage of thick mucus or pus from the eye.

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

WAC 170-297-4850 Pet and other animal health and safety. (1) Pets that have contact with children must:

- (a) Have current immunizations for ~~((communicable))~~ contagious diseases;
 - (b) Show no signs of disease, worms or parasites; and
 - (c) Have veterinarian documentation that the pet is non-aggressive.
- (2) Children and program staff must wash their hands as required under WAC 170-297-3650 before and after handling or feeding pets or handling pet toys or equipment.
- (3) Programs that are on school district property must follow the school district's policy for pets.

WSR 13-17-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-196—Filed August 16, 2013, 9:37 a.m., effective August 16, 2013, 9:37 a.m.]

Effective Date of Rule: Immediately upon filing.
Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of filing permanent rules that were adopted by the Washington fish and wildlife commission. 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: August 16, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-23500A Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-56-235, effective immediately until further notice, it is unlawful to fish for, retain, or possess sixgill, sevengill, or thresher sharks. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use:

- (1) Marine Areas 1 through 3: 12 fish-limit, which includes a sub-limit of 10 rockfish, 2 lingcod, and 2 cabezon.
- (2) Marine Area 4: 10-fish limit, which includes a sub-limit of 6 rockfish, black and blue only; 2 lingcod, and 1 cabezon. Cabezon minimum size limit is 18 inches.
- (3) Marine Areas 5 through 11 and 13, Cabezon: Daily limit 1. The minimum size limit for cabezon is 18 inches.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-23500Z Possession limits—Bottomfish. (13-82)

WSR 13-17-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-200—Filed August 16, 2013, 11:50 a.m., effective August 18, 2013, 12:01 a.m.]

Effective Date of Rule: August 18, 2013, 12:01 a.m.
Purpose: Amend recreational fishing rules.

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

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 Sol Duc Hatchery has achieved the needed spring/summer chinook broodstock, which allows the Sol Duc River to reopen for angling.

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

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

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

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

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

Date Adopted: August 16, 2013.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 18, 2013:

WAC 232-28-61900Y Exceptions to statewide rules—Sol Duc River. (13-143)

**WSR 13-17-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-202—Filed August 16, 2013, 4:35 p.m., effective August 16, 2013, 4:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100S; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surplus of salmon is available in Puget Sound Salmon Management and Catch Reporting Area 9A for a commercial gillnet opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 16, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-41100S Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below and with the minimum mesh size indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods	Mesh Size
9A	7 AM 8/18 - 7 AM 8/25	Minimum 5 inch

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 a.m. August 25, 2013:

WAC 220-47-41100S Gillnet—Open periods.

**WSR 13-17-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-201—Filed August 16, 2013, 4:36 p.m., effective August 17, 2013, 12:01 a.m.]

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

Purpose: Amend recreational fishing rules.

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

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: Preliminary estimates indicate that encounters with legal size hatchery and wild (unmarked)

chinook in Area 10 will exceed the preseason expectations. The chinook fishery is being closed to control impacts on stocks of concern and ensure compliance with conservation objectives and agreed-to management plans. Salmon fishing opens south of Foulweather Bluff to Olele Point to allow anglers to target pink and coho. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 16, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62100X Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective 12:01 a.m. August 17, 2013, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 7:** Waters east of a line from Gooseberry Point to Sandy Point: Closed September 3 until further notice.

(2) **Catch Record Card Area 8-2:** Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point: Open only from Friday through 11:59 a.m. the following Monday of each week, effective immediately through September 2; and Saturday through Sunday from September 7 through September 22. Daily limit 2, plus 2 additional pink salmon. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing. Same rules as remainder of Area 8-2 apply from September 23 through September 30.

(3) **Catch Record Card Area 9:** Effective immediately until further notice: All waters in Area 9, excluding Edmonds Fishing Pier: Release all Chinook.

(4) **Catch Record Card Area 9:** Effective immediately through August 31: South of a line from Foulweather Bluff to Olele Point: Open. Daily limit 2 salmon, plus 2 additional pink salmon. Release Chinook and chum.

(5) **Catch Record Card Area 10:** Effective immediately until further notice, waters of Elliott Bay east of a line from West Point to Alki Point: Closed, except waters north of

a line from Jack Block Park through the north end of Harbor Island to shore northeast of the North Waterway (47°35.47'N, 122°20.58'W), open effective immediately through August 31, Friday through Sunday only of each week. Daily limit 2 salmon, plus 2 additional pink salmon. Release Chinook and chum. Bait prohibited. Hooks must measure 1/2" or less from point to shank.

(6) **Catch Record Card Area 10:** Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line true west from Battle Point, and west of a line drawn true south from Point White: Effective immediately until further notice, daily limit of 3 salmon plus 1 additional pink salmon. Release wild Chinook. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(7) **Catch Record Card Area 10:** Effective August 19 until further notice: All waters in Area 10, excluding Sinclair Inlet, Elliot Bay Fishing Pier at Terminal 86, Seacrest Pier, Waterman Pier, Bremerton Boardwalk and Illahee State Park Pier: Release Chinook and chum.

(8) **Catch Record Card Area 12:** Waters north of a line true east from Broad Spit: Open immediately through September 15; daily limit 4 coho salmon only.

(9) **Catch Record Card Area 13:** Effective immediately until further notice: Daily limit of 2 salmon plus 2 additional pink salmon. Release wild coho and wild Chinook.

(10) **Catch Record Card Area 13:** Fox Island Public Fishing Pier, effective immediately until further notice: 2 additional pink salmon may be retained as part of the daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 17, 2013:

WAC 232-28-62100W Puget Sound salmon—Saltwater seasons and daily limits. (13-182)

WSR 13-17-093 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-203—Filed August 20, 2013, 2:17 p.m., effective August 20, 2013, 11:59 p.m.]

Effective Date of Rule: August 20, 2013, 11:59 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.020, 77.04.055, and 77.12.047.

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 2013 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes Catch Area 23A-C to spot shrimp fishing, as the quota has been reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 20, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

(1) Shrimp pot gear:

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

i) All waters of the Discovery Bay Shrimp District are closed;

ii) All waters of Shrimp Management Areas 4 and 6 and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-C, 23A-E and 25A are closed to the harvest of spot shrimp; and

iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all shrimp species other than spot shrimp.

(b) The spot shrimp catch accounting biweekly management periods are as follows:

i) Immediately through August 27, 2013.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds per biweekly management period, with the following exceptions:

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per biweekly management period in Shrimp Manage-

ment Area 1C, or to exceed 600 pounds per biweekly management period in Catch Area 23B.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp.

i) Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure.

ii) Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) The following areas are open to Shrimp beam trawl gear, effective immediately, until further notice.

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

(b) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B.

(c) All waters of Catch Area 20A.

(3) It is unlawful to sell shrimp taken under this section to any person who is not a licensed Washington wholesale fish dealer.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. August 20, 2013:

WAC 220-52-05100G Puget Sound shrimp beam trawl fishery—Season. (13-193)

WSR 13-17-096 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-204—Filed August 20, 2013, 4:38 p.m., effective August 23, 2013, 12:01 a.m.]

Effective Date of Rule: August 23, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.020, 77.04.055, and 77.12.047.

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 Buoy 10 fishery at the mouth of the Columbia River is projected to reach the chinook catch guideline prior to the planned date of September 1

without the implementation of a mark-selective fishery. The mark-selective fishery will allow the fishery to meet the pre-season objective of having chinook retention through September 1, 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 3.

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

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

Date Adopted: August 20, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Freshwater exceptions to state-wide rules—Columbia River and tributaries. Notwithstanding the provisions of WAC 232-28-619, effective immediately, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Abernathy Creek (Cowlitz Co.) from mouth (Hwy. 4 Bridge) to posted markers 500 feet below salmon hatchery: Effective immediately until further notice, barbless hooks required for steelhead.

2. Blue Creek (Lewis Co.) from mouth to posted sign above rearing pond outlet: Effective immediately until further notice, barbless hooks required for steelhead.

3. Camas Slough: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

4. Cedar Creek (tributary of North Fork Lewis River) (Clark Co.): Effective immediately until further notice, barbless hooks required for steelhead.

5. Cispus River (Lewis Co.) from mouth to North Fork: Effective immediately until further notice, barbless hooks required for steelhead.

6. Coal Creek (Cowlitz Co.) from mouth to 400 feet below falls: Effective immediately until further notice, barbless hooks required for steelhead.

7. Columbia River from a true north/south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(a) Effective immediately until further notice, barbless hooks required for salmon and steelhead.

(b) Effective August 23 through September 1, 2013, it shall be unlawful to retain a wild Chinook salmon. For the

purposes of this regulation, the only Chinook that can be retained are those with a clipped adipose fin and a healed scar at the location of the fin or a completely removed left ventral fin and a healed scar at the location of the fin.

(c) Effective September 2 through September 30, release Chinook.

8. Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) to Bonneville Dam:

(a) Effective immediately until further notice, barbless hooks required for salmon and steelhead.

(b) Effective immediately until further notice, barbless hooks required for cutthroat trout from the Rocky Point/Tongue Point line upstream to the I-5 Bridge.

(c) Effective immediately until further notice, no more than one Chinook may be retained.

(i) Downstream of a line from a line projected from the Warrior Rock lighthouse through Red Buoy #4 to the orange marker atop the dolphin on the Washington shore:

(A) Effective September 6 through September 12, release wild Chinook.

(B) Effective September 13 through September 30, release Chinook.

9. Columbia River from Bonneville Dam to Chief Joseph Dam: Salmon open until further notice. Effective immediately until further notice, barbless hooks required for salmon and steelhead.

10. Coweeman River (Cowlitz Co.): Effective immediately until further notice, barbless hooks required for steelhead.

11. Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.): Effective immediately until further notice, barbless hooks required for salmon and steelhead.

12. Cowlitz River (Cowlitz Co.) from mouth to 400 feet below Mayfield Powerhouse: Effective immediately until further notice, barbless hooks required for salmon, steelhead, and cutthroat trout.

13. Cowlitz River (Cowlitz Co.) from posted PUD sign on Peters Rd. to the mouth of Ohanepecosh and mouth of Muddy Fork: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

14. Drano Lake (waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery) (Skamania Co.): Effective immediately until further notice, barbless hooks required for salmon and steelhead.

15. Elochoman River (Wahkiakum Co.) from mouth to West Fork: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

16. Germany Creek (Cowlitz Co.) from mouth to end of Germany Creek Road (approximately 5 miles): Effective immediately until further notice, barbless hooks required for steelhead.

17. Grays River (Wahkiakum Co.) from mouth to mouth of South Fork: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

18. Grays River, West Fork (Wahkiakum Co.) from mouth to hatchery intake/footbridge: Effective immediately

until further notice, barbless hooks required for salmon and steelhead.

19. Green River (Cowlitz Co.) from mouth to Miner's Creek: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

20. Hamilton Creek (Skamania Co.): Effective immediately until further notice, barbless hooks required for steelhead.

21. Kalama River (Cowlitz Co.) from boundary markers at the mouth to 1,000 feet below the fishway at upper salmon hatchery:

(a) Effective immediately until further notice, barbless hooks required for salmon and steelhead.

(b) Effective immediately until further notice, stationary gear restriction has been rescinded.

22. Klickitat River (Klickitat Co.) from mouth to Yakama reservation boundary: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

23. Lacamas Creek (tributary of Cowlitz River) (Lewis Co.): Effective immediately until further notice, barbless hooks required for steelhead.

24. Lewis River (Clark Co.) from mouth to forks: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

25. Lewis River, East Fork (Clark/Skamania counties) from mouth to 400 feet downstream of Horseshoe Falls: Effective immediately until further notice, barbless hooks required for steelhead.

26. Lewis River, North Fork (Clark/Skamania counties) from mouth to overhead powerlines below Merwin Dam:

(a) Effective immediately until further notice, barbless hooks required for salmon and steelhead.

(b) Effective immediately through September 30, open for salmon. Daily limit 6 hatchery salmon, of which no more than 2 may be adult Chinook. Release all salmon except hatchery Chinook and hatchery coho.

(c) Effective immediately until further notice, Colvin Creek to powerlines, anti-snagging rule is in effect.

27. Little Washougal River (Clark Co.): Effective immediately until further notice, barbless hooks required for steelhead.

28. Mill Creek (Cowlitz Co.): Effective immediately until further notice, barbless hooks required for steelhead.

29. Mill Creek (tributary of Cowlitz River) (Lewis Co.) from mouth to hatchery road crossing culvert: Effective immediately until further notice, barbless hooks required for steelhead.

30. Olequa Creek (Lewis/Cowlitz counties): Effective immediately until further notice, barbless hooks required for steelhead.

31. Rock Creek (Skamania Co.): Effective immediately until further notice, barbless hooks required for steelhead.

32. Salmon Creek (Clark Co.) from mouth to 72nd Ave. Bridge: Effective immediately until further notice, barbless hooks required for steelhead.

33. Skamokawa Creek (Wahkiakum Co.) from mouth (Hwy. 4 Bridge) to forks below Oatfield and Middle Valley Road: Effective immediately until further notice, barbless hooks required for steelhead.

34. Tilton River (Lewis Co.) from mouth to West Fork: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

35. Toutle River (Cowlitz Co.) from mouth to forks: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

36. Toutle River, North Fork (Cowlitz Co.) from mouth to posted deadline downstream of the fish collection facility: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

37. Toutle River, South Fork (Cowlitz Co.): Effective immediately until further notice, barbless hooks required for steelhead.

38. Washougal River (Clark County) from mouth to Salmon Falls:

(a) Effective immediately until further notice, barbless hooks required for salmon and steelhead.

(b) Effective immediately until further notice, stationary gear restriction has been rescinded.

39. Washougal River, West (North) Fork (Clark/Skamania counties) from water intake at WDFW hatchery upstream: Effective immediately until further notice, barbless hooks required for steelhead.

40. White Salmon River (Klickitat/Skamania counties) from mouth to county road bridge below the powerhouse: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

41. Wind River (Skamania Co.) from mouth to 400 feet below Shipherd Falls: Effective immediately until further notice, barbless hooks required for salmon and steelhead.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900C Exceptions to statewide rules. (13-151)

The following section of the Washington Administrative Code is repealed effective August 23, 2013:

WAC 232-28-61900U Exceptions to statewide rules—
Columbia River and tributaries (13-169)

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

WAC 232-28-61900F Exceptions to statewide rules—
Columbia River and tributaries.

WSR 13-17-098
EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner No. R 2013-20—Filed August 21, 2013, 8:25 a.m., effective August 21, 2013, 8:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Provide guidance to issuers of nongrandfathered individual and small group plans that are not offered through associations, related to the replacement of currently issued health benefit plans after the market reforms of 2014 become effective.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.700, 48.43.715, 48.44.050, 48.46.200.

Other Authority: 45 C.F.R. 150.101(2).

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 rules are required for an orderly market transition from noncompliant plans, that must be discontinued, to replacement plans that must be in place by the next renewal date for each group or individual after January 1, 2014. Of particular concern is that health plan issuers will adjust renewal dates to lengthen the period of time enrollees are on noncompliant plans after January 1, 2014. The rules also implement 45 C.F.R. 147.140.

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

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

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

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

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

Date Adopted: August 21, 2013.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-170-954 Small group coverage market transition requirements. (1) For all nongrandfathered small group plans issued and in effect prior to January 1, 2014, issuers must replace issued nongrandfathered small group health benefit plans with health benefit plans approved by the commissioner as follows:

(a) An issuer may elect to withdraw a product, pursuant to RCW 48.43.035, and discontinue each small group's plan

under that product on the same date, substituting a replacement plan effective on the date of discontinuation; or

(b) An issuer may discontinue a small group's coverage and offer the full range of plans the issuer offers in the small group market as replacement options, to take effect on the small group's renewal date. For small groups covered by non-grandfathered health benefit plans purchased through an association, the requirements of WAC 284-170-955 and WAC 284-170-958 apply.

(c) If an issuer does not have a replacement plan approved by the commissioner to offer in place of the discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(2) If an issuer selects the replacement option described in subsection (1)(b) of this section, ninety days before the renewal date for the small group's coverage, the issuer must provide the small group plan sponsor with written notice of the discontinuation containing the following information:

(a) Specific descriptions of the replacement plans for which the small group and its enrollees are eligible, both on or off the health benefit exchange;

(b) Electronic link information to the Summary of Benefits and Explanation of Coverage for each replacement plan option;

(c) Contact information to access assistance from the issuer in selecting the replacement plan option or answering enrollee questions about the replacement plans made available to them by their employer.

(3) For either replacement option set forth in subsection (1) of this section, the issuer must provide a separate written notice to each enrollee notifying the enrollee that their small group plan coverage will be discontinued and replaced. The notice must be provided not later than ninety days prior to the discontinuation and replacement date.

(4) If an issuer has electronic mail contact information for the small group plan sponsor or the enrollees, the written notice may be provided electronically. The issuer must be able to document to the commissioner's satisfaction both the content and timing of transmission. The issuer must send written notice by U.S. mail to a sponsor or enrollee for whom the electronic mail message was rejected.

(5) An issuer may offer small groups the option to voluntarily discontinue and replace prior to their renewal date.

(a) An issuer must not selectively offer early renewal to small groups, but must make this option universally available.

(b) An issuer must not alter or change a small group's renewal date to lengthen the period of time before discontinuation and replacement occurs in 2014. For example, if a small group's renewal date is March 31 of each year, the issuer may not adjust the benefit year in 2013 to apply a renewal date of November 30.

NEW SECTION

WAC 284-170-959 Individual coverage market transition requirements. (1) For all nongrandfathered individual health benefit plans issued and in effect prior to January 1, 2014, issuers must replace issued the plans with health benefit plans approved by the commissioner as follows:

(a) An issuer may elect to withdraw a product, pursuant to RCW 48.43.038, and discontinue each health benefit plan in force under that product on the same date, requiring selection of a replacement plan to be effective on the date of discontinuation; or

(b) An issuer may discontinue an individual's coverage and offer the full range of plans the issuer offers in the individual market as replacement options, to take effect on the individual's renewal date.

(c) If an issuer does not have a replacement plan approved by the commissioner to offer in place of the discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(2) If an issuer selects the replacement option described in subsection (1)(b) of this section, ninety days before the renewal date for the coverage, the issuer must provide the individual and each enrollee under the health benefit plan with written notice containing the following information:

(a) Specific descriptions of the replacement plans for which the enrollees are eligible, both on or off the health benefit exchange;

(b) Electronic link information to the Summary of Benefits and Explanation of Coverage for each replacement plan option;

(c) Contact information for assistance from the issuer in selecting the replacement plan option or answering enrollee questions about the replacement plans;

(d) If a renewal date is later than January 1, 2014, the issuer's ninety-day discontinuation and replacement notice must notify the individual and any other enrollees on the plan of the shortened plan year for 2014 under the replacement coverage.

(3) For either replacement option set forth in subsection (1) of this section, the issuer must provide a separate written notice to each enrollee notifying the enrollee that their existing coverage will be discontinued and replaced. The notice must be provided not later than ninety days prior to the discontinuation and replacement date.

(4) If an issuer has electronic mail contact information for the enrollees, the notice may be provided electronically. The issuer must be able to document to the commissioner's satisfaction both the content and timing of transmission. The issuer must send written notice by U.S. mail to an enrollee for whom the electronic mail message was rejected.

(5) Prior to September 30, 2013, and between September 1 and September 30 for each year thereafter, an issuer must provide written notice to each enrollee under an individual health benefit plan of the availability of health benefit exchange coverage, and contact information for the health benefit exchange.

WSR 13-17-122
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 21, 2013, 11:41 a.m., effective August 21, 2013, 11:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend and add new sections to chapter 388-845 WAC, DDD home and community-based services (HCBS) waivers, to be in compliance with the requirements of SSB 6384 and related federal waivers recently renewed through Centers for Medicare and Medicaid Services (CMS). These changes add dental services as a waiver service and align this chapter with the changes being made to those in chapter 388-828 WAC for community services. This is a subsequent request to the previous CR-103E filed as WSR 13-10-020.

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 CMS, 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. A CR-102 has been filed as WSR 13-17-112 and a hearing is scheduled for October 22, 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 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 0, Amended 17, Repealed 0.
Date Adopted: August 21, 2013.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-18 issue of the Register.