

**WSR 14-12-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-116—Filed May 21, 2014, 12:02 p.m., effective June 4, 2014,  
12:01 a.m.]

Effective Date of Rule: June 4, 2014, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-310-19000E [220-310-19000D]; and  
amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012,  
77.04.020, 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: This rule change is necessary to ensure a successful youth fishing event. The fish will be planted in the lake two days prior to the event to better acclimate them. On the day of the event, only juvenile anglers will be allowed to fish in the lake. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 21, 2014.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-310-19000D Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective 12:01 a.m. June 4 through June 7, 2014, it is unlawful to fish in those waters of Heart Lake, except open to fishing 6:00 a.m. to 12:00 p.m. June 7, 2014, to anglers participating in the youth fishing event. Juvenile anglers can continue to fish on June 7, 2014, after the youth fishing event closes.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 8, 2014:

WAC 220-310-19000D Exceptions to statewide rules—  
Heart Lake (Skagit Co.)

**WSR 14-12-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-115—Filed May 21, 2014, 4:16 p.m., effective May 27, 2014,  
12:01 a.m.]

Effective Date of Rule: May 27, 2014, 12:01 a.m.

Purpose: Amend recreational fishing rules for razor clams.

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

Statutory Authority for Adoption: RCW 77.04.012,  
77.04.020, 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: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches are safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 21, 2014.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-56-36000N Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it

is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided in this section:

(1) Effective 12:01 a.m. May 27, 2014 through 11:59 a.m. June 1, 2014, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. May 27, 2014 through 11:59 a.m. June 1, 2014, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. May 29, 2014 through 11:59 a.m. June 1, 2014, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 a.m. May 29, 2014 through 11:59 a.m. June 1, 2014, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. June 1, 2014:

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

**WSR 14-12-006  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-120—Filed May 22, 2014, 9:22 a.m., effective May 23, 2014]

Effective Date of Rule: May 23, 2014.

Purpose: Amend recreational fishing rules in Icicle River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500K; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.12.047 [77.04.012], 77.04.020, 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: In-season run analysis has predicted that about six thousand salmon are currently enroute to the Icicle River. Although upper Columbia River spring chinook have been listed as endangered under the Endangered Species Act (ESA), the salmon returning to the Icicle River are a nonendemic stock returning to Leavenworth National Fish Hatchery, and are not listed under the ESA. About one thousand six hundred salmon are needed to meet hatchery broodstock requirements. The 2014 return ensures that the

hatchery will meet its escapement needs; the remaining fish will be available for harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 22, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500K Exceptions to statewide rules—Icicle River (Chelan Co.)** Notwithstanding the provisions of WAC 220-310-195, effective May 23 through July 31, 2014, it is permissible to fish for salmon in those waters of the Icicle River from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Rack. Daily limit: two hatchery salmon; minimum size, 12 inches. Night closure is in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2014:

WAC 220-310-19500K Exceptions to statewide rules—Icicle River (Chelan Co.)

**WSR 14-12-009  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-121—Filed May 22, 2014, 3:27 p.m., effective May 25, 2014, 8:50 p.m.]

Effective Date of Rule: May 25, 2014, 8:50 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500J and 220-310-19500L; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Based on the current harvest estimates and anticipated harvest through Tuesday, May 27, 2014, the spring chinook harvest allocation for the Snake River is expected to be achieved. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 22, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500L Freshwater exceptions to statewide rules—Snake River.** Notwithstanding the provisions of WAC 220-310-195, effective 8:50 p.m. May 25, 2014, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) A person may fish for and possess salmon in waters of the Snake River from the south shore boat launch (Ilia boat launch) across to the mouth of Almota Creek upstream about four miles to the restricted fishing area below Lower Granite Dam. Open Saturday through Tuesday. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

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

(3) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

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

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

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:50 p.m. May 25, 2014:

WAC 220-310-19500J Freshwater exceptions to statewide rules—Snake River. (14-111)

The following section of the Washington Administrative Code is repealed effective 8:52 p.m. May 27, 2014:

WAC 220-310-19500L Freshwater exceptions to statewide rules—Snake River.

#### **WSR 14-12-011**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 14-122—Filed May 22, 2014, 4:48 p.m., effective May 22, 2014, 4:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

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: A harvestable number of salmon is available for the troll fleet. Restrictions in Areas 3 and 4 are implemented to keep impacts within preseason planning limits for Puget Sound chinook. Restrictions in Areas 1 and 2 are implemented to not exceed the spring quota. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 22, 2014.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-24-04000D 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 below:

(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:

May 23 through May 27, 2014,  
May 30 through June 3, 2014,  
June 6 through June 10, 2014,  
June 13 through June 17, 2014,  
June 20 through June 24, 2014,  
June 27 through June 30, 2014.

(2) Landing and possession limit of 60 Chinook per boat per each entire open period for the entire Catch Areas 1 and 2.

(3) Landing and possession limit of 40 Chinook per boat per each entire open period for the entire Catch Areas 3 and 4.

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

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

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

(d) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. 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](mailto:Douglas.Milward@dfw.wa.gov) with Area fished, total Chinook and halibut catch aboard, 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](mailto:Douglas.Milward@dfw.wa.gov) with Area fished, total Chinook and halibut catch aboard, and destination. 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.

(e) 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.

(f) Columbia Control Zone is define 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°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

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

(h) 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.

(i) 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](mailto: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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000C All-citizen commercial salmon troll.  
(14-119)

**WSR 14-12-015**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Medicaid Program)

[Filed May 23, 2014, 10:49 a.m., effective May 28, 2014]

Effective Date of Rule: May 28, 2014.

Purpose: **Medicaid Expansion Rules – Phase 2.** The health care authority (HCA) is implementing new regulations

under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Repealing WAC 182-505-0220, 182-505-0230, 182-505-0245 and 182-505-0515; and amending WAC 182-500-0020, 182-500-0030, 182-503-0505, 182-503-0520, 182-503-0540, 182-504-0015, 182-504-0125, 182-505-0100, 182-505-0115, 182-505-0210, 182-505-0215, 182-505-0225, 182-505-0235, 182-505-0237, and 182-505-0240.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

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: This emergency rule is necessary to continue the current emergency rule adopted under WSR 14-04-056 which implements the requirements of the Affordable Care Act, including the expansion of medicaid. The agency has been working diligently with client advocates and other stakeholders to complete the permanent rule-making process. A CR-102 has been filed under WSR 14-10-057 and a public hearing has been scheduled for June 10, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 23, Amended 15, Repealed 4; 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 23, Amended 15, Repealed 4.

Date Adopted: May 23, 2014.

Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-500-0020 Medical assistance definitions—**  
C. **"Caretaker relative"** means a relative of a dependent

child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(2) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

(3) Other relatives including relatives of half-blood, first cousins once removed, persons of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

**"Carrier"** means an organization that contracts with the federal government to process claims under medicare Part B.

**"Categorically needy (CN) or categorically needy program (CNP)"** is the state and federally funded health care program established under Title XIX of the Social Security Act for persons within medicaid-eligible categories, whose income and/or resources are at or below set standards.

**"Categorically needy income level (CNIL)"** is the standard used by the agency to determine eligibility under a categorically needy program.

**"Categorically needy (CN) scope of care"** is the range of health care services included within the scope of service categories described in WAC ((~~388-501-0060~~)) 182-501-0060 available to (~~individuals~~) persons eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

**"Centers for Medicare and Medicaid Services (CMS)"** means the agency within the federal department of health and human services (DHHS) with oversight responsibility for the medicare and medicaid programs.

**"Children's health program or children's health care programs"** See "Apple health for kids."

**"Community spouse."** See "spouse" in WAC ((~~388-500-0100~~)) 182-500-100.

**"Cost-sharing"** means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

**"Cost-sharing reductions"** means reductions in cost-sharing for an eligible person enrolled in a silver level plan in the health benefit exchange or for a person who is an American Indian or Alaska native enrolled in a qualified health plan (OHP) in the exchange.

**"Couple."** See "spouse" in WAC ((~~388-500-0100~~)) 182-500-0100.

**"Covered service"** is a health care service contained within a "service category" that is included in a medical assistance benefits package described in WAC ((~~388-501-0060~~)) 182-501-0060. For conditions of payment, see WAC ((~~388-501-0050~~)) 182-501-0050(5). A noncovered service is a specific health care service (for example, cosmetic surgery), contained within a service category that is included in a medical assistance benefits package, for which the agency or the agency's designee requires an approved exception to rule

(ETR) (see WAC ((388-501-0160)) 182-501-0160). A non-covered service is not an excluded service (see WAC ((388-501-0060)) 182-501-0060).

**"Creditable coverage"** means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c)(1).

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

**WAC 182-500-0030 Medical assistance definitions—E. "Early and periodic screening, diagnosis and treatment (EPSDT)"** is a comprehensive child health program that entitles infants, children, and youth to preventive care and treatment services. EPSDT is available to persons twenty years of age and younger who are eligible for any agency health care program. Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B. See also chapter ((388-534)) 182-534 WAC.

**"Emergency medical condition"** means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (1) Placing the patient's health in serious jeopardy;
- (2) Serious impairment to bodily functions; or
- (3) Serious dysfunction of any bodily organ or part.

~~("Emergency medical expense requirement (EMER)" see WAC 388-865-0217(3).)~~

**"Employer-sponsored dependent coverage"** means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or in part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

**"Evidence-based medicine (EBM)"** means the application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective, and beneficial when making:

(1) Population-based health care coverage policies (WAC ((388-501-0055)) 182-501-0055 describes how the agency or ((the agency's)) its designee determines coverage of services for its health care programs by using evidence and criteria based on health technology assessments); and

(2) Individual medical necessity decisions (WAC ((388-501-0165)) 182-501-0165 describes how the agency or ((the agency's)) its designee uses the best evidence available to determine if a service is medically necessary as defined in WAC ((388-500-0030)) 182-500-0030).

**"Exception to rule."** See WAC ((388-501-0160)) 182-501-0160 for exceptions to noncovered health care services.

supplies, and equipment. See WAC 182-503-0090 for exceptions to program eligibility.

**"Expedited prior authorization (EPA)"** means the process for obtaining authorization for selected health care services in which providers use a set of numeric codes to indicate to the agency or the agency's designee which acceptable indications, conditions, or agency or agency's designee-defined criteria are applicable to a particular request for authorization. EPA is a form of "prior authorization."

**"Extended care services"** means nursing and rehabilitative care in a skilled nursing facility provided to a recently hospitalized medicare patient.

#### NEW SECTION

**WAC 182-503-0001 Insurance affordability programs—Overview.** (1) For the purposes of this chapter, "we" refers to the agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.

(2) A person may apply for all of the insurance affordability programs offered through the health care authority (HCA) or the Washington Healthplanfinder (as defined in WAC 182-500-0015):

(a) Washington apple health (WAH) programs (defined in WAC 182-500-0120). WAH includes medicaid programs (defined in WAC 182-500-0070), the children's health insurance program (CHIP) (defined in WAC 182-500-0020), and state-only funded health care programs. These programs are provided free or at low cost on a sliding scale to eligible persons based on their income. WAH program regulations for the application process and eligibility determination are found in chapters 182-503 through 182-527 WAC.

(b) Health insurance premium tax credits (defined in WAC 182-500-0045). This federal refundable tax credit partially offsets the cost of monthly premiums for qualified health plan (QHP) (defined in WAC 182-500-0090) insurance that an eligible person purchases through the Washington Healthplanfinder. Any advance payments of the tax credit are reconciled annually by the Internal Revenue Service (IRS) when the person files his or her federal tax return.

(c) Cost-sharing reductions. Cost-sharing reductions (defined in WAC 182-500-0020) are available to eligible persons enrolled in a silver-level QHP and to American Indians/Alaska Natives enrolled in any QHP.

(3) A person may also apply for and enroll in unsubsidized insurance with a QHP. This unsubsidized insurance is not an insurance affordability program.

(4) Persons choose whether or not to apply for insurance affordability programs. All persons who apply for an insurance affordability program are treated as an applicant for WAH coverage and receive an approval or denial of WAH. Applicants who are denied WAH are reviewed for other insurance affordability programs.

#### NEW SECTION

**WAC 182-503-0005 Washington apple health—How to apply.** (1) You may apply for Washington apple health (WAH) by giving us (the medicaid agency or its designee) an application as follows:

(a) For WAH for parents and caretaker relatives, adults, pregnant women, or kids (with or without premiums):

(i) Online via the Washington Healthplanfinder at <http://www.wahealthplanfinder.org>;

(ii) By calling the Washington Healthplanfinder customer support center number;

(iii) By mail to Washington Healthplanfinder, the agency or its designee; or

(iv) By fax to Washington Healthplanfinder.

(b) For WAH medical programs for persons age sixty-five or older, persons on medicare, persons applying for health care based on blindness or disability, or persons applying for long-term care services:

(i) Online via Washington Connection at <http://www.waconnection.org>;

(ii) By mail to community services division of the department of social and health services (DSHS); or

(iii) At a local DSHS office.

(c) For the breast and cervical cancer treatment program (see WAC 182-505-0120), the TAKE CHARGE program (see chapter 182-532 WAC), and the kidney disease program (chapter 182-540 WAC), complete a separate application directly with a program provider.

More information on how to give us an application may be found at the agency's web site: <http://www.hca.wa.gov>.

(2) You may start an application for WAH by giving us at least the following information:

(a) Name of the primary applicant or head of household;

(b) Birth dates; and

(c) Signing the application.

(3) To complete an application for WAH, you must also give us all of the other information requested on the application form.

(4) If you need help filing an application, you can:

(a) For WAH for parents and caretaker relatives, adults, pregnant women, or kids (with or without premiums):

(i) Contact the Washington Healthplanfinder customer support center number listed on the application form or medical eligibility determination services at the number provided on the agency's web site, <http://www.hca.wa.gov>; or

(ii) Contact an application assistor, certified application counselor or navigator.

(b) For WAH medical programs for persons age sixty-five or older, persons on medicare, persons applying for health care based on blindness or disability, or persons applying for long-term care services:

(i) Visit a local DSHS office; or

(ii) Call the DSHS community services division customer service contact center.

(c) Have an authorized representative apply on your behalf as described in WAC 182-500-0010.

(5) We will help you with the application or renewal process in a manner that is accessible to persons with disabilities as described in WAC 182-503-0120 and in a manner that is accessible to those who are limited-English proficient as described in WAC 182-503-0110.

#### NEW SECTION

**WAC 182-503-0010 Washington apple health—Who can apply.** (1) You may apply for Washington apple health (WAH) for yourself.

(2) You can apply for WAH for another person if you are:

(a) A legal guardian;

(b) An authorized representative (as described in WAC 182-500-0010);

(c) A parent or caretaker relative of a child less than nineteen years of age;

(d) A tax filer applying for a tax dependent less than nineteen years of age;

(e) A spouse; or

(f) A person applying for someone who is unable to apply on their own due to a medical condition and who is in need of long-term care services.

(3) If you reside in one of the following facilities and the facility has entered into a memorandum of understanding with the agency, the agency will coordinate with the facility to enroll you in WAH coverage for which you are determined eligible no later than the day you are released to:

(a) A correctional institution, as defined in RCW 9.94.049, including:

(i) Washington state department of corrections facilities;

(ii) City or county jails; and

(iii) Secure community transition facilities and total confinement facilities, as defined in RCW 71.09.020, including the special commitment center.

(b) An institution for mental disease (IMD).

(4) You are automatically enrolled in WAH and do not need to turn in an application if you are a:

(a) Supplemental security income (SSI) recipient;

(b) Person deemed to be an SSI recipient under 1619(b) of the SSA;

(c) Newborn as described in WAC 182-505-0210; or

(d) Child in foster care placement as described in WAC 182-505-0211.

(5) You are the primary applicant on an application if you complete and sign the application on behalf of your household.

(6) If you are an SSI recipient, then you, your authorized representative as defined in WAC 182-500-0010, or another person applying on your behalf as described in subsection (2) of this section, must turn in a signed application to apply for long-term care services as described in WAC 182-513-1315.

#### NEW SECTION

**WAC 182-503-0060 Washington apple health (WAH)—Application processing times.** (1) We process applications for Washington apple health (WAH) within forty-five calendar days, with the following exceptions:

(a) If you are pregnant, we process your application within fifteen calendar days;

(b) If you are applying for a program that requires a disability decision, we process your application within sixty calendar days; or

(c) The modified adjusted gross income (MAGI)-based WAH application process using Washington Healthplan-

finder may provide faster or real-time determination of eligibility for medicaid.

(2) For calculating time limits, "day one" is the day we get an application from you that includes at least the information described in WAC 182-503-0005(2). If you give us your paper application during business hours, "day one" is the day you give us your application. If you give us your paper application outside of business hours, "day one" is the next business day. If you experience technical difficulties while attempting to give us your application in Washington Healthplanfinder, "day one" is the day we are able to determine, based on the evidence available, that you first tried to submit an application that included at least the information described in WAC 182-503-0005(2).

(3) We determine eligibility as quickly as possible and respond promptly to applications and information received. We do not delay a decision by using the time limits in this section as a waiting period.

(4) If we need more information to decide if you can get WAH coverage, we will send you a letter within twenty calendar days of your initial application that:

- (a) Follows the rules in chapter 182-518 WAC;
- (b) States the additional information we need; and
- (c) Allows at least ten calendar days to provide it. We

will allow you more time if you ask for more time or need an accommodation due to disability or limited-English proficiency.

(5) Good cause for a delay in processing the application exists when we acted as promptly as possible but:

(a) The delay was the result of an emergency beyond our control;

(b) The delay was the result of needing more information or documents that could not be readily obtained;

(c) You did not give us the information within the time frame specified in subsection (1) of this section.

(6) Good cause for a delay in processing the application does NOT exist when:

- (a) We caused the delay in processing by:
  - (i) Failing to ask you for information timely; or
  - (ii) Failing to act promptly on requested information when you provided it timely; or
- (b) We did not document the good cause reason before missing a time frame specified in subsection (1) of this section.

#### NEW SECTION

**WAC 182-503-0070 Washington apple health (WAH)—When coverage begins.** (1) Your Washington apple health (WAH) coverage starts on the first day of the month you applied for and we decided you are eligible to receive coverage, unless one of the exceptions in subsection (4) of this section applies to you.

(2) Sometimes we can start your coverage up to three months before the month you applied (see WAC 182-504-0005).

(3) If you are confined or incarcerated as described in WAC 182-503-0010, your coverage cannot start before the day you are discharged, except when:

- (a) You are hospitalized during your confinement; and

(b) The hospital requires you to stay overnight.

(4) Your WAH coverage may not begin on the first day of the month if:

(a) Subsection (3) of this section applies to you. In that case, your coverage would start on the first day of your hospital stay;

(b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or

(c) You are eligible under the WAH alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your emergent hospital stay begins.

(5) For long-term care, the date your services start is described in WAC 388-106-0045.

#### NEW SECTION

**WAC 182-503-0080 Washington apple health—Application denials and withdrawals.** (1) We follow the rules about notices and letters in chapter 182-518 WAC. We follow the rules about timelines in WAC 182-503-0060.

(2) We deny your application for Washington apple health (WAH) coverage when:

(a) You tell us either orally or in writing to withdraw your request for coverage; or

(b) Based on all information we have received from you and other sources within the time frames stated in WAC 182-503-0060, including any extra time given at your request or to accommodate a disability or limited-English proficiency:

- (i) We are unable to determine that you are eligible; or
- (ii) We determine that you are not eligible.

(3) We send you a written notice explaining why we denied your application (per chapter 182-518 WAC).

(4) We reconsider our decision to deny your WAH coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within thirty days of the date on the denial notice; or

(b) You request a hearing within ninety days of the date on the denial letter and an administrative law judge (ALJ) or HCA review judge decides our denial was wrong (per chapter 182-526 WAC).

(5) If you disagree with our decision, you can ask for a hearing. If we denied your application because we don't have enough information, the ALJ will consider the information we already have and anymore information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

#### NEW SECTION

**WAC 182-503-0515 Washington apple health—Social Security number requirements.** (1) To be eligible for Washington apple health (WAH), you must provide your valid Social Security number (SSN) or proof of application for an SSN, except as provided in subsections (5) and (6) of this section.

(2) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:



(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(3) Your WAH coverage will not be delayed, denied or terminated while waiting for SSA to send you your SSN.

(4) If you do not provide your SSN, then you will not receive WAH coverage except if you:

(a) Refused to apply for or provide your SSN for religious reasons;

(b) Claim good cause for not providing your SSN because of domestic violence;

(c) Have a newborn as described in WAC 182-505-0210(1). A newborn is eligible for WAH coverage until the baby's first birthday.

(5) There is no SSN requirement for the following:

(a) WAH refugee medical;

(b) WAH alien emergency medical;

(c) WAH programs for children and pregnant women who do not meet citizenship criteria described in WAC 182-503-0535;

(d) A household member who is not applying for WAH coverage.

(6) If you are a "qualified" or "nonqualified" alien as defined in WAC 182-503-0530 who is not authorized to work in the U.S., you do not have to apply for a nonwork SSN.

#### NEW SECTION

**WAC 182-503-0525 Washington apple health—Residency requirements for an institutionalized person.** (1) An institutionalized person is a person who resides in an institution as defined in WAC 182-500-0050. The term "person" used in this section means an "institutionalized person" unless otherwise indicated. It does not include persons who receive services under a home and community-based waiver program. When a state is making a placement for a person in another state, the term institution also includes foster care homes, licensed as described in 45 C.F.R. 1355.20.

(2) The agency must determine whether a person is capable of indicating their intent to reside in Washington state when deciding whether that person is a resident of the state. The agency determines that persons who meet the following criteria are deemed incapable of indicating intent to reside in the state:

(a) The person is judged legally incompetent by a court of law;

(b) A physician, psychologist or licensed medical professional in the field of intellectual disabilities has determined that the person is incapable of indicating intent; or

(c) The person is incapable of declaring intent due to a documented medical condition.

(3) When a person is placed in an out-of-state institution by the agency, its designee or by a department of social and health services-contracted agency, the state arranging the placement is considered the person's state of residence, unless the person is capable of expressing intent and:

(a) Indicates a desire to change his or her state of residence; or

(b) Asks the current state of residence for help in relocating. This may include assistance in locating an institutional placement in the new state of residence.

(4) If another state has not authorized the placement in the institution, as described in subsection (3) of this section, the agency or its designee uses one of the following criteria to determine the state of residence for a person who is age twenty or younger:

(a) The state of residence is the state where the parent or legal guardian is a resident at the time of the placement in the institution. To determine a parent's or legal guardian's place of residence, follow rules described in WAC 182-503-0520 for a noninstitutionalized person.

(b) The state of residence is the state where the parent or legal guardian currently is a resident if the person resides in an institution in that state.

(c) If the parents of the person are separated and live in different states, the state of residence is that of the parent filing the application.

(d) If the parental rights are terminated and the person has a legal guardian, the state of residence is where the legal guardian is a resident.

(e) If the person has both a guardian of the estate and a guardian of the person, the state of residence is where the guardian of the person is a resident, unless the state has laws which delegate guardianship to a state official or agency for persons who are admitted to state institutions. In that case, the state of residence for the person is the state where the institution is located (unless another state has authorized the placement).

(f) If the person has been abandoned by the parents or legal guardian, and an application is filed on their behalf by another party, the state of residence is the state where the person is institutionalized. The term abandoned also includes situations where the parents or legal guardian are deceased.

(5) A person age twenty-one or older that is capable of indicating intent is considered a resident of the state where he or she is living and intends to reside.

(6) A person age twenty-one or older who became incapable of indicating intent at age twenty-one or older is considered a resident of the state where the person is physically residing, unless the person has been placed in the institution by another state.

(7) A person age twenty-one or older who became incapable of indicating intent before the age of twenty-one is considered a resident of the state where the parents or legal guardian were residents at the time of the placement in the institution.

(8) If a noninstitutionalized person moves directly from another state to an institution in Washington state, it is not necessary for the person to establish residency in Washington state prior to entering the facility. The person is considered a resident if he or she intends to reside in the state unless the placement was made by the other state.

(9) A person of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.

(10) In a dispute between states, the state of residence is the state in which the person is physically located.

NEW SECTION

**WAC 182-503-0535 Washington apple health—Citizenship and alien status.** (1) To receive Washington apple health (WAH) coverage, you must meet all other eligibility requirements and be one of the following as defined in WAC 182-503-0530:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) A qualified alien; or
- (d) A nonqualified alien and you are a:
  - (i) Pregnant woman;
  - (ii) Person who is otherwise eligible for medical care services (see WAC 182-508-0005);
  - (iii) Child under age nineteen; or
  - (iv) Child under age twenty-one who resides in an institution.

(2) If you are a nonqualified alien approved under deferred action childhood arrivals (DACA), then you are not eligible for WAH under subsection (1)(d) of this section. However, you may qualify under subsection (6) of this section.

(3) If you are a qualified alien as defined in WAC 182-503-0530, who physically entered the U.S. before August 22, 1996, you may receive WAH for nonpregnant adults if you:

- (a) Became a qualified alien before August 22, 1996; or
- (b) Became a qualified alien on or after August 22, 1996, and have continuously resided in the U.S. between your date of entry into the U.S. and the date on which you became a qualified alien.

(4) If you are a qualified alien who physically entered the U.S. on or after August 22, 1996, and you are a nonpregnant adult, you are not eligible to receive WAH for five years beginning on the day you most recently became a qualified alien, unless you meet one of the exemptions in subsection (5) of this section. This is called the five-year bar. The five-year bar starts on the day you obtain qualified alien status.

(5) You are exempt from the five-year bar if you are one of the following qualified aliens as defined in WAC 182-503-0530:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Special immigrants from Iraq and Afghanistan;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the Office of Refugee Resettlement (ORR); and
- (h) American Indians born outside the U.S. without regard to immigration status or date of entry if:
  - (i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or
  - (ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation; and
- (i) Lawful permanent residents, parolees, or battered aliens, who are also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(i) On active duty in the U.S. military, other than active duty for training;

(ii) An honorably discharged U.S. veteran;

(iii) A veteran of the military forces of the Philippines who served prior to July 1st, 1946, as described in Title 38, Section 107 of the U.S. Code; or

(iv) The spouse, unremarried widow or widower, or unmarried dependent child of a veteran or active duty service member.

(6) If you are ineligible for WAH because of the five-year bar or because of your immigration status, including if you are approved under DACA, you may be eligible for:

(a) The WAH alien emergency medical program as described in WAC 182-507-0110 through 182-507-0125;

(b) WAH pregnancy medical for noncitizen women as described in WAC 182-505-0115;

(c) WAH for kids for pregnant minors as described in WAC 182-505-0117;

(d) State-funded WAH for kids as described in WAC 182-505-0210; or

(e) The medical care services (MCS) program as described in chapter 182-508 WAC.

NEW SECTION

**WAC 182-503-0565 Washington apple health—Age requirements for medical programs based on modified adjusted gross income (MAGI).** The following age requirements apply to persons whose eligibility for Washington apple health (WAH) is based on modified adjusted gross income (MAGI) methodology per WAC 182-509-0305.

(1) You must be age sixty-four or younger to be eligible for WAH MAGI-based adult coverage as described in WAC 182-505-0250.

(2) Your household must include an eligible dependent child age seventeen or younger to be eligible for WAH parent or caretaker relative coverage as described in WAC 182-505-0240. For purposes of this subsection, an "eligible dependent child" is a child related to you in one of the ways described in WAC 182-500-0020.

(3) A child must be age eighteen or younger to be eligible for WAH for kids as described in WAC 182-505-0210 with the following exceptions:

(a) An institutionalized child may still qualify under a children's health care program through the age of twenty-one (see WAC 182-514-0230);

(b) A foster care child may qualify for WAH foster care coverage through the age of twenty-six (see WAC 182-505-0211).

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-503-0505 Washington apple health—General eligibility requirements ((for medical programs)).** (1) Persons applying for ((benefits under the medical coverage)) Washington apple health (WAH) programs established under chapter 74.09 RCW must meet the eligibility criteria ((established by the department)) in chapters ((388-400)) 182-500 through ((388-555)) 182-527 WAC.

(2) Persons applying for ~~((medical coverage))~~ WAH are considered first for federally funded or federally matched programs. State-funded programs are considered after the person is determined ineligible for federally funded and federally matched programs ((are not available to the client except for brief periods when the state-funded programs offer a broad scope of care which meet a specific client need)).

(3) Unless otherwise specified in a program specific WAC, the eligibility criteria for each ~~((medical))~~ WAH program ~~((is))~~ are as follows:

(a) ~~((Verification of))~~ Age and identity ((chapters 388-404, 388-406, and 388-490)) WAC 182-503-0050; ((and))

(b) Residence in Washington state ((chapter 388-468)) WAC 182-503-0520 and 182-503-0525; ((and))

(c) Citizenship or immigration status in the United States ((chapter 388-424)) WAC 182-503-0535; ((and))

(d) Possession of a valid Social Security account number ((chapter 388-476)) WAC 182-503-0515; ((and))

(e) Assignment of medical support rights to the state of Washington (WAC ((388-505-0540)) 182-503-0540); ((and))

(f) ~~((Cooperation in securing medical support (chapter 388-422 WAC); and~~

~~((g))~~ Application for medicare and enrollment into medicare's prescription drug program if:

(i) It is likely that the ((individual)) person is entitled to medicare; and

(ii) The state has authority to pay medicare cost sharing as described in chapter ((388-517)) 182-517 WAC.

~~((h))~~ (g) For persons whose eligibility is not on the basis of modified adjusted gross income (MAGI) methodology, countable resources must be within specific program limits (chapters ((388-470 and 388-478)) 182-512, 182-513, 182-515, 182-517, and 182-519 WAC); and

~~((i))~~ (h) Countable income within program limits ((chapters 388-450 and 388-478 WAC-));

(i) For MAGI-based WAH programs, see WAC 182-505-0100;

(ii) For the WAH refugee program, see WAC 182-507-0110;

(iii) For the WAH medical care services program, see WAC 182-508-0150;

(iv) For WAH for workers with disabilities (HWD), see WAC 182-511-0060;

(v) For the WAH SSI-related program, see WAC 182-512-0010;

(vi) For WAH long-term care programs, see WAC 182-513-1300 and 182-515-1500;

(vii) For WAH medicare savings programs, see WAC 182-517-0100; and

(viii) For the WAH medically needy program, see WAC 182-519-0050.

(4) In addition to the general eligibility requirements in subsection (3) of this section, each program has specific eligibility requirements as described in applicable WAC.

(5) Persons ~~((living))~~ in a public institution, including a correctional facility, are not eligible for ~~((the department's medical coverage))~~ WAH programs ~~((For a person)),~~ except in the following situations:

(a) The person is under age twenty or over age sixty-five ((who)) and is a patient in an institution for mental disease (see WAC ((388-513-1315(13) for exception-)) 182-513-1315(13)); or

(b) The person receives inpatient hospital services outside of the public institution or correctional facility.

(6) Persons terminated from SSI or ~~((TANF cash grants and those))~~ who lose eligibility for categorically needy (CN) ~~((medical))~~ coverage have their CN coverage continued while their eligibility for other ~~((medical))~~ health care programs is redetermined. ~~((This continuation of medical coverage is described in chapter 388-434 WAC))~~ See WAC 182-504-0125.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-503-0520 Washington apple health—Residency requirements ((for medical care services (MCS))—Persons who are not residing in an institution. ((This section applies to medical care services (MCS-))**

(1) A resident is ~~((an individual who:~~

~~((a))~~ a person (including an emancipated person under age eighteen and a married person under age eighteen who is capable of indicating intent) who currently lives in Washington and;

(a) Intends to ((continue living here permanently or for an indefinite period of time)) reside here, including persons without a fixed address; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) ~~((An individual))~~ A person does not need to live in the state for a specific period of time prior to ((be)) meeting the requirements in subsection (1) of this section before being considered a resident.

(3) ~~((An individual receiving MCS))~~ A child under age eighteen who is not covered by subsection (1) of this section, is a resident if:

(a) The child lives in the state, with or without a fixed address, including with a custodial parent or caretaker; or

(b) The child's parent or caretaker is a resident as defined in subsection (1) of this section.

(4) A resident applying for or receiving health care coverage can temporarily be out of the state for more than one month ~~((If so, the individual must provide the agency or the agency's designee with adequate information to demonstrate the intent to continue to reside in the state of Washington.~~

~~((4) An individual may not receive comparable benefits from another state for the MCS program.~~

~~((5) A former resident of the state can apply for MCS while living in another state if:~~

~~((a) The individual:~~

~~((i) Plans to return to this state;~~

~~((ii) Intends to maintain a residence in this state; and~~

~~((iii) Lives in the United States at the time of the application.~~

~~((b) In addition to the conditions in (a)(i), (ii), and (iii) of this subsection being met, the absence must be:~~

~~((i) Enforced and beyond the individual's control; or~~

~~(ii) Essential to the individual's welfare and is due to physical or social needs.~~

~~(e) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.~~

~~(6) Residency is not a requirement for detoxification services.~~

~~(7) An individual is not a resident when the individual enters Washington state only for medical care. This individual is not eligible for any medical program. The only exception is described in subsection (8) of this section.~~

~~(8) It is not necessary for an individual moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The individual is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.~~

~~(9) An individual's residence is the state:~~

~~(a) Where the parent or legal guardian resides, if appointed, for an institutionalized individual twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one;~~

~~(b) Where an individual is residing if the individual becomes incapable of determining residential intent after reaching twenty-one years of age;~~

~~(c) Making a placement in an out-of-state institution; or~~

~~(d) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.~~

~~(10) In a dispute between states as to which is an individual's state of residence, the state of residence is the state in which the individual is physically located) without their health care coverage being denied or terminated, if the person:~~

~~(a) Intends to return to the state once the purpose of his or her absence has been accomplished and provides adequate information of this intent after a request by the agency or its designee; and~~

~~(b) Has not been determined eligible for medicaid or state-funded health care coverage in another state (other than coverage in another state for incidental or emergency health care).~~

~~(5) A person who enters Washington state only for health care is not a resident and is not eligible for any medical program. The only exception is for a person who moves from another state directly into an institution in Washington state. Residency rules for institutionalized persons are described in WAC 182-503-0525.~~

~~(6) A person of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.~~

~~(7) A person who receives federal payments for foster or adoption assistance is considered a resident of the state where the person physically resides even if:~~

~~(a) The person does not live in the state that is making the foster or adoption assistance payment; or~~

~~(b) The person does not live in the state where the adoption agreement was entered.~~

~~(8) In a dispute between states, the state of residence is the state in which the person is physically located.~~

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-503-0540 Assignment of rights and cooperation.** (1) When ~~((a person))~~ you become~~((s))~~ eligible for any of the ~~((department's medical))~~ agency's health care programs, ~~((they make assignment of))~~ you assign certain rights to the state of Washington. ~~((This assignment includes))~~ You assign all rights to any type of coverage or payment for ~~((medical))~~ health care ~~((which results))~~ that comes from:

(a) A court order;

(b) An administrative agency order; or

(c) Any third-party benefits or payment obligations for medical care which are the result of **subrogation** or contract (see WAC 388-501-0100).

(2) ~~((Subrogation is a legal term which describes the method by which the state acquires the rights of a client for whom or to whom the state has paid benefits. The subrogation rights of the state are limited to the recovery of its own costs.~~

~~(3) The person who) When you sign((s)) the application ((makes the assignment of)) you assign the rights described in subsection (1) of this section to the state((Assignment is made on their own behalf and on behalf of any eligible person for whom they can legally make such assignment.~~

~~(4) A person) for:~~

~~(a) Yourself; and~~

~~(b) Any eligible person for whom you can legally make such assignment.~~

~~(3) You must cooperate with ((the department)) us in ((the identification, use or collection of)) identifying, using or collecting third-party benefits. ((Failure to)) If you do not cooperate ((results in a termination of eligibility for the responsible person. Other obligations for cooperation are located in chapters 388-14A and 388-422 WAC. The following clients are exempt from termination of eligibility for medical coverage as a result of noncooperation:~~

~~(a) A pregnant woman; and~~

~~(b) Minor children; and~~

~~(c) A person who has been determined to have "good cause" for noncooperation (see WAC 388-422-0015).~~

~~(5) A person will not lose eligibility for medical assistance programs), your health care coverage may end unless you can show good reason not to cooperate with us. Examples of good reason include, but are not limited to:~~

~~(a) Your reasonable belief that cooperating with us would result in serious physical or emotional harm to you or a child in your care; and~~

~~(b) Your being incapacitated without the physical ability to cooperate with us.~~

~~(4) Your WAH coverage will not end due solely to the noncooperation of any third party.~~

~~((6) A person) (5) You will ((be responsible for the costs of otherwise covered medical)) have to pay for your health care services if you:~~

~~(a) ((The person)) Received and kept the third-party payment for those services; or~~

~~(b) ((The person)) Refused to ((provide)) give to the provider of care ((their)) your legal signature on insurance forms.~~

(6) The state is limited to the recovery of its own costs for health care costs paid on behalf of a recipient of health care coverage. The legal term which describes the method by which the state acquires the rights of a person for whom the state has paid costs is called subrogation.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

**WAC 182-504-0015 Washington apple health—Certification periods for categorically needy ~~((CN) scope of care medical assistance))~~ **programs.** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) ~~((scope of care medical))~~ Washington apple health (WAH) program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues ~~((to))~~ through the last day of the last month of the certification period.**

(2) For a ~~((child))~~ newborn eligible for ~~((the newborn medical program))~~ WAH, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for ~~((a medical program))~~ WAH based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For a person eligible for the WAH refugee program, the certification period ends at the end of the eighth month following the client's date of entry to the United States.

(5) For ~~((families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011))~~ all other WAH-CN coverage, the certification period is twelve months.

~~((5))~~ (6) For children, ~~((the certification period is twelve months.))~~ eligibility is continuous ~~((without regard to changes in circumstances other than aging out of the program, moving out of state, failing to pay a required premium(s), incarceration or death.))~~

~~((6))~~ throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months or the child:

- (a) Turns age nineteen;
- (b) Moves out of state;
- (c) Is incarcerated; or
- (d) Dies.

(7) When the child turns nineteen, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services ~~((see))~~ described in WAC ~~((388-505-0230))~~ 182-514-0230 on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for ~~((exceeding))~~ turning age nineteen.

~~((7))~~ For an SSI-related person the certification period is twelve months.

(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

~~((9))~~ (8) A retroactive certification period ~~((can begin up to three months immediately before the month of application when:~~

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

(10) If the client is eligible only during the three month retroactive period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier than the month of conception. Eligibility continues as described in subsection (3);

(b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through (5) and (7) in one of the three months preceding the month of application. Eligibility continues for twelve months from the earliest month that the child is determined eligible.

(11) Any months of a retroactive certification period are added to the designated certification periods described in this section) is described in WAC 182-504-0005.

~~((12))~~ (9) Coverage under premium-based programs included in apple health for kids as described in ~~((WAC 388-505-0210 and))~~ chapter ~~((388-542))~~ 182-505 WAC begins no sooner than the month after creditable coverage ends.

## NEW SECTION

**WAC 182-504-0120 Washington apple health—Effective dates of changes.** (1) We (the agency or its designee) determine the date a change affects your Washington apple health (WAH) coverage based on:

- (a) The date you report the change to us;
- (b) The date you give us the requested verification; and
- (c) The type of WAH you or your family is receiving.

(2) When you report a change after you submit your application, but before your application is processed, the change is considered when processing your application.

(3) If another person, agency, or data source reports a change in circumstances, the information may be used in determining your eligibility. We will not rely on information received from a person, agency, or data source to terminate your WAH coverage without requesting additional information from you.

(4) A change in income affects your ongoing eligibility only if it is expected to continue beyond the month when the change is reported, and only if it is expected to last more than two months.

(5) A change that results in termination of your WAH coverage takes effect the first of the month following the advance notice period.

(6) The advance notice period:

(a) Begins on the day we send the letter about the change to you; and

(b) Is determined according to the rules in WAC 182-518-0025.

(7) A change that results in a decreased scope of care takes effect on the first of the month following the advance notice period. Examples of a decreased scope of care are:

(a) Termination of WAH categorically needy (CN) medical and approval for other WAH coverage with a lesser scope of care such as WAH medically needy (MN) medical;

(b) WAH-MN recipient with a change that increases the spenddown liability amount;

(c) WAH-MN recipient with no spenddown liability with a change that results in WAH-MN with a spenddown liability.

(8) A change that results in an increased scope of care takes effect on the first of the month following the date the change was reported, when you provide the required verification:

(a) Within ten days of the date we requested the verification; or

(b) By the end of the month of your change report, whichever is later.

If you are a WAH-MN applicant with a spenddown liability that has not yet been met and you report a change that results in your becoming eligible for WAH-CN medical or WAH for adults, your change report will be treated as a new application for purposes of retroactive WAH coverage as described in WAC 182-504-0005.

(9) If you do not provide the required verification timely under subsection (8) of this section, we make the change effective the first of the month following the month in which you provide the verification. We may terminate your WAH coverage if you do not provide the required verification.

(10) When a law or regulation requires a change in WAH, the date specified by the law or regulation is the effective date of the change.

(11) When a change in income or allowable expenses is reported timely (within thirty days) and changes the amount you pay towards the cost of your care for institutional programs (residing in a medical institution), we calculate your new participation amount based on:

(a) Either actual income received in a month or allowable deductions incurred in a month, or both; or

(b) An estimate of your monthly or allowable expenses in a prospective period of six months or less, based on both actual income received in a preceding period of six months or less and income expected to be received during the prospective period. At the end of the prospective period or when any significant change occurs, we reconcile this estimate for the period with income received during the same period.

(12) When a change in income, or allowable expenses, changes the amount you pay towards the cost of your care for a home and community-based waiver or service, we calculate your new participation amount effective the first of the following month, except that the new participation amount will be effective the month the change occurs if the change is the loss of an income source that you report within thirty days of the change.

(13) We use the following rules to determine the effective date of change for the health care for workers with disabilities (HWD) program:

(a) HWD coverage begins the month after coverage in another medical program ends and the premium amount has been approved by the eligible person; and

(b) If a change in income increases or decreases the monthly premium, the change is effective the first of the month after the change is reported. For more information on premium requirements for this program, see WAC 182-511-1250.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-504-0125 Washington apple health—~~Effect of reported changes ((on medical program eligibility)).~~ (1) ~~((An individual))~~ If you report a change required under WAC 182-504-0105 during a certification period, you continue((s)) to be eligible for ((medical assistance)) Washington apple health (WAH) coverage until ((the agency or the agency's designee completes a review of the individual's case record and determines the individual is ineligible for medical assistance or is eligible for another medical program. This applies to all individuals who, during a certification period, become ineligible for, or are terminated from, or request termination from:

(a) A categorically needy (CN) medicaid program;

(b) A program included in apple health for kids; or

(c) Any of the following cash grants:

(i) Temporary assistance for needy families (TANF);

(ii) Supplemental security income (SSI); or

(iii) Aged, blind, disabled (ABD) cash assistance. See WAC 388 434 0005 for changes reported during eligibility review)) we decide if you can keep getting WAH coverage under your current WAH program or a different WAH program.

(2) ~~(((CN medical)))~~ your WAH categorically needy (CN) coverage ends ((under one program and the individual meets)) due to a reported change and you meet all the eligibility requirements ((to be eligible under)) for a different ((CN medical)) WAH-CN program, ((coverage is approved)) we will approve your coverage under the new WAH-CN program. If ((the individual's income exceeds the standard for CN medical coverage, the agency or the agency's designee considers eligibility under the medically needy (MN) program where appropriate.

~~(((H)))~~ you are not eligible for coverage under any WAH-CN ((medical coverage ends and the individual does not)) program but you meet the eligibility requirements ((to be eligible under a different medical program, the redetermination process is complete and medical assistance is terminated giving advance and adequate notice with the following exception:

~~(((An individual who claims)))~~ for either WAH alternative benefits plan (ABP) coverage or WAH medically needy (MN) coverage, we will approve your coverage under the program you are eligible for. If you are not eligible for coverage under any WAH-CN program but you meet the eligibility requirements for both WAH-ABP coverage and WAH-MN

coverage, we will approve the WAH-ABP coverage unless you notify us that you prefer WAH-MN coverage.

(3) If your WAH coverage ends and you are not eligible for a different WAH program, we stop your WAH coverage after giving you advance and adequate notice unless the exception in subsection (4) of this section applies to you.

(4) If you claim to have a disability ((is referred to the division of disability determination services for a disability determination if)) and that is the only basis ((under which the individual is)) for you to be potentially eligible for ((medical assistance)) WAH coverage, then we refer you to the division of disability determination services (within the department of social and health services) for a disability determination. Pending the outcome of the disability determination, ((medical eligibility is considered)) we also determine if you are eligible for WAH coverage under the SSI-related medical program described in chapter ((388-475)) 182-512 WAC. ((b)) An individual with countable income in excess of the SSI-related CN medical standard is considered for medically needy (MN) coverage or medically needy (MN)) If you have countable income in excess of the SSI-related categorically needy income level (CNIL), then we look to see if you can get coverage under WAH-MN with spenddown as described in chapter 182-519 WAC pending the final outcome of the disability determination.

~~((4) An individual who becomes ineligible for refugee cash assistance is eligible for continued refugee medical assistance through the eight-month limit, as described in WAC 182-507-0130.~~

~~(5) An individual who receives a TANF cash grant or family medical is eligible for a medical extension, as described under WAC 182-523-0100, when the cash grant or family medical program is terminated as a result of:~~

- ~~(a) An increase in earned income; or~~
- ~~(b) Collection of child or spousal support.~~

~~(6)) (5) If you receive coverage under the WAH parent and caretaker relative program described in WAC 182-505-0240, you will be eligible for the WAH medical extension program described in WAC 182-523-0100, if your coverage ends as a result of an increase in your earned income.~~

~~(6) Changes in income during a certification period do not affect((s)) eligibility for ((all medical programs except)) the following programs:~~

~~(a) WAH for pregnant ((women's CN medical programs)) women;~~

~~(b) ((A program included in apple health for kids)) WAH for children, except as specified in subsection ((5)) (7) of this section; ((or))~~

~~(c) ((The first six months of the medical extension benefits described under chapter 182-523 WAC.~~

~~(7) A child who receives)) WAH for SSI recipients;~~

~~(d) WAH refugee program; and~~

~~(e) WAH medical extension program.~~

~~(7) We redetermine eligibility for children receiving WAH for kids premium-based coverage ((under a program included in apple health for kids)) described in WAC 182-505-0210 ((and chapter 182-505 WAC must be redetermined for a nonpremium-based coverage)) when the ((family reports)):~~

~~(a) ((Family)) Household's countable income ((has decreased)) decreases to ((less than two hundred percent)) a percentage of the federal poverty level (FPL) that would result in either a change in premium for WAH for kids with premiums or the children becoming eligible for WAH for kids (without premiums);~~

~~(b) ((The)) Child becomes pregnant;~~

~~(c) ((A change in)) Family size changes; or~~

~~(d) ((The)) Child receives SSI.~~

~~(8) ((An individual who receives)) If you get SSI-related WAH-CN ((medical)) coverage and report((s)) a change in work or earned income which ((exceeds the substantial gainful activity (SGA) limit set by Social Security Administration)) results in a determination by the division of disability determination services that you no longer meet((s)) the definition of a disabled ((individual)) person as described in WAC 182-512-0050((, unless the individual continues to receive a Title 2 cash benefit, e.g., SSDI, DAC, or DWB. The agency or the agency's designee)) due to work or earnings at the level of substantial gainful activity (SGA), we redetermine((s)) your eligibility for ((such an individual)) coverage under the health care for workers with disabilities (HWD) program ((which waives the SGA income test)). The HWD program is a premium-based program that waives the SGA work or earnings test, and ((the individual)) you must approve the premium amount before ((the agency or the agency's designee)) we can authorize ((ongoing CN medical benefits)) coverage under this program. For HWD program rules, see chapter 182-511 WAC.~~

~~(9) Prior to a scheduled renewal or March 31, 2014, whichever is later, your WAH coverage will not end and you will not pay more for your WAH coverage as a result of an eligibility determination if:~~

~~(a) You are enrolled in WAH at the time of the eligibility determination;~~

~~(b) You were enrolled in WAH prior to October 1, 2013; and~~

~~(c) At the time of the eligibility determination, your enrollment in WAH is not yet based on MAGI methodologies.~~

#### NEW SECTION

**WAC 182-504-0035 Washington apple health—Renewals.** (1) For all Washington apple health (WAH) programs, the following applies:

(a) You are required to complete a renewal of eligibility at least every twelve months with the following exceptions:

(i) If you are eligible for WAH medically needy with spenddown, then you must complete a new application at the end of each three- or six-month base period;

(ii) If you are eligible for WAH alien emergency medical, then you are certified for a specific period of time to cover emergency inpatient hospitalization costs only (see WAC 182-507-0115(8)); or

(iii) If you are eligible for WAH refugee coverage, you must complete a renewal of eligibility after eight months.

(b) You may complete renewals online, by phone, or mailed or faxed to us (the agency or its designee).

(c) If your WAH is renewed, we decide the certification period according to WAC 182-504-0015.

(d) We review all eligibility factors subject to change during the renewal process.

(e) We redetermine eligibility as described in WAC 182-504-0125 and send you written notice as described in WAC 182-518-0005 before WAH is terminated.

(f) If you need help meeting the requirements of this section, we provide equal access services as described in WAC 182-503-0120.

(2) For programs based on modified adjusted gross income (MAGI) as described in WAC 182-503-0510:

(a) Sixty days prior to the end of the certification period:

(i) When information from electronic sources shows income is reasonably compatible (as defined in WAC 182-500-0095), we administratively renew your coverage (as defined in WAC 182-500-0010) for a new certification period and send you a notice of renewal with the information used. You are required to inform us if any of the information we used is wrong.

(ii) If we are unable to complete an administrative renewal (as defined in WAC 182-500-0010), you must give us a signed renewal in order for us to decide if you will continue to get WAH coverage beyond the current certification period.

(iii) We follow the requirements described in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(b) If your WAH coverage is terminated because you didn't renew, you have ninety days from the termination date to give us a completed renewal. If we decide you are still eligible to get WAH coverage, we will restore your WAH without a gap in coverage.

(3) For non-MAGI based programs (as described in WAC 182-503-0510):

(a) Forty-five days prior to the end of the certification period, we send notice with a renewal form to be completed, signed, and returned by the end of the certification period.

(b) We follow the requirements in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(c) If you are terminated for failure to renew, you have thirty days from the termination date to submit a completed renewal. If still eligible, we will restore your WAH without a gap in coverage.

(4) If we determine that you are not eligible for renewal of your WAH coverage, we:

(a) Consider your eligibility for all other WAH programs before ending your WAH coverage; and

(b) Coordinate with the health benefit exchange any request for information that is necessary to determine your eligibility for:

(i) Other WAH programs; and

(ii) With respect to qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045) and cost-sharing reductions (as defined in WAC 182-500-0020).

#### NEW SECTION

**WAC 182-504-0105 Washington apple health—Changes that must be reported.** (1) You must report changes in your household and family circumstances to us (the agency or its designee) timely according to WAC 182-504-0110.

(2) We tell you what you are required to report at the time you are approved for WAH coverage. We also will tell you if the reporting requirements change.

(3) You must report the following:

(a) Change in residential address;

(b) Change in mailing address;

(c) Change in marital status;

(d) When family members or dependents move in or out of the residence;

(e) Pregnancy;

(f) Incarceration;

(g) Change in institutional status;

(h) Change in health insurance coverage including medicare eligibility; and

(i) Change in immigration or citizenship status.

(4) If you are eligible for a WAH long-term care program described in chapter 182-513 or 182-515 WAC, you must also report changes to the following:

(a) Income;

(b) Resources;

(c) Medical expenses; and

(d) Spouse or dependent changes in income or shelter cost when expenses are allowed for either.

(5) If you get WAH parent or caretaker (as described in WAC 182-505-0240) or WAH modified adjusted gross income (MAGI)-based adult coverage (as described in WAC 182-505-0250), you must also report changes to the following:

(a) When total income increases or total deductions decrease by one hundred fifty dollars or more a month and the change will continue for at least two months;

(b) Your federal income tax filing status that you expect to use when you file your taxes for the current tax filing year (such as changing from "married filing separately" to "married filing jointly"); and

(c) The tax dependents you expect to claim when you file your federal income tax return for the current tax filing year.

(6) If you get WAH based on age, blindness, or disability (SSI-related medical), then you must also report changes to the following:

(a) Income; and

(b) Resources.

#### NEW SECTION

**WAC 182-504-0110 Washington apple health—When to report changes.** (1) All changes you report to us (the agency or its designee), as required by WAC 182-504-0105, are used to decide if you can receive or keep receiving Washington apple health (WAH) coverage.

(2) You must report changes during your certification period within thirty days of when the change happened.



(3) You must report all changes during application, renewal, or redetermination of your WAH eligibility, regardless of when the change happened.

(4) For a change in income, the date a change happened is the first date you received income based on the change. For example, the date you receive your first paycheck for a new job or the date you got a paycheck with a wage increase is the date the change happened.

(5) If you don't report a change or you report a change late, we will decide if you can receive or keep receiving WAH coverage based on the date the change was required to be reported.

(6) If you don't report a change or you report a change late, and if it affects the amount you must pay toward your cost of care as described in WAC 182-513-1380 or chapter 182-515 WAC, you may become liable for overpayments we make on your behalf and you may need to pay more to your care provider.

(7) If you don't report a change or you report a change late, it may result in us overpaying you and you having to pay us back for the health care costs we overpaid. See chapter 182-520 WAC.

AMENDATORY SECTION (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

**WAC 182-505-0100 ((Medical programs)) Washington apple health—Monthly income standards based on the federal poverty level (FPL).** (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following ((medical)) Washington apple health (WAH) programs change on the first day of April every year based on the new FPL:

(a) ((Pregnant women's program up to one hundred eighty-five)) WAH for parents and caretaker relatives up to fifty-four percent of FPL (see WAC 182-505-0240). Persons enrolled in WAH for parents and caretaker relatives whose earned income increases above this limit are the only persons who may be eligible for the WAH transitional medical program described in WAC 182-523-0100;

(b) ((A program included in apple health for kids up to two hundred)) Modified adjusted gross income (MAGI)-based WAH for adults up to one hundred thirty-three percent of FPL;

(c) ((Health care for workers with disabilities (HWD) up to two hundred twenty)) WAH for pregnant women up to one hundred ninety-three percent of FPL; ((and))

(d) ((Premium-based coverage under a program included in apple health for kids over two hundred percent of FPL, but not over three hundred)) WAH for children up to two hundred ten percent of FPL; and

(e) Premium-based coverage under WAH for children over two hundred ten percent of FPL, but not over three hundred twelve percent of FPL.

(2) The ((department)) agency uses the FPL income standards to determine((:

(a) The mandatory or optional medicaid status of an individual; and

(b) Premium amount, if any, for a child.

(3) There are no resource limits for the programs under this section)) the premium amount, if any, for a child.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0115 ((Medical)) Washington apple health—Eligibility for pregnant women.** ((Eligibility requirements for pregnancy medical are described below:))

(1) A pregnant woman is eligible for ((categorically needy (CN) scope of care)) the Washington apple health (WAH) for pregnant women program if she ((meets the following requirements)):

(a) Meets citizenship or immigration status ((chapter 388-424 WAC)) under WAC 182-503-0535; ((and))

(b) Meets Social Security ((account)) number ((chapter 388-474 WAC)) requirements under WAC 182-503-0115; ((and))

(c) ((Is a)) Meets Washington state ((resident (chapter 388-468 WAC)) residency requirements under WAC 182-503-0520 and 182-503-0525; and

(d) Has countable income ((as described in)) at or below the limit described in:

(i) WAC ((388-478-0075)) 182-505-0100 to be eligible for categorically needy (CN) coverage; or

(ii) WAC 182-505-0100 to be eligible for medically needy (MN) coverage. MN coverage begins when the pregnant woman meets any required spenddown liability as described in WAC 182-519-0110.

(2) ((A pregnant woman is considered for medically needy (MN) scope of care if she meets the requirements in subsection (1)(a) through (c) of this section and:

(a) Has countable income that exceeds the standard in subsection (1)(d) of this section; and

(b) Has countable resources that do not exceed the standard in WAC 388-478-0070.

(3) A pregnant woman may be eligible for noncitizen pregnancy medical if she is not eligible for medical described in subsections (1) and (2) of this section due to citizenship, immigrant status, or social security number requirements.

(4) A pregnant woman meeting the eligibility criteria in subsection (3) is eligible for:

(a) CN scope of care when the countable income is at or below the income standard described in subsection (1)(d); or

(b) MN scope of care when:

(i) The countable income exceeds the standard in subsection (1)(d); and

(ii) The resources do not exceed the standard described in WAC 388-478-0070.

(5) Consider as income to the pregnant woman the amount that is actually contributed to her by the father of her unborn child when the pregnant woman is not married to the father.

(6)) A noncitizen pregnant woman who does not need to meet the requirements in subsection (1)(a) or (b) of this section to be eligible for WAH and receives either CN or MN coverage based upon her countable income as described in subsection (1)(d) of this section.

~~(3) The assignment of ((child support and)) medical support rights as described in ((chapter 388-422)) WAC ((do)) 182-503-0540 do not apply to pregnant women.~~

~~((7)) (4) A woman who was eligible for and received ((medical)) coverage under any WAH program on the last day of pregnancy is eligible for extended medical ((benefits)) coverage for postpartum care for a minimum of sixty days from the end of her pregnancy. This includes women who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. This extension continues through the end of the month in which the sixtieth day falls.~~

~~((8) A woman who was eligible for medical coverage on the last day of pregnancy is)) (5) All women approved for WAH pregnancy coverage at any time are eligible for family planning services for twelve months ((from the end of)) after the pregnancy ((even when eligibility for pregnancy was determined after the pregnancy ended)) ends.~~

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0210 Washington apple health ((for kids and other children's medical assistance programs)) —Eligibility for children.** ((Funding for coverage under the apple health for kids programs may come through Title XIX (medicaid), Title XXI (CHIP), or through state funded programs. There are no resource limits for the apple health for kids programs. Apple health for kids coverage is free to children in households with incomes of no more than two hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three hundred percent FPL.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

- (a) The newborn is a resident of the state of Washington;
- (b) The newborn's mother is eligible for medical assistance:
  - (i) On the date of the newborn's birth, including a retroactive eligibility determination; or
  - (ii) Based on meeting a medically needy (MN) spenddown liability with expenses incurred on, or prior to, the date of the newborn's birth.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for free federally matched CN coverage when they meet the following criteria:

- (a) State residence as described in chapter 388-468 WAC;
- (b) A Social Security number or application as described in chapter 388-476 WAC;
- (c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);
- (d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or
- (e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eli-

gible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are currently eligible for SSI.

(3) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for free state-funded coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for premium-based federally matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(c) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

(d) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(e) They pay the required monthly premiums as described in WAC 388-505-0211.

(5) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for premium-based state-funded CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premium as described in WAC 388-505-0211.

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Are ineligible for other federally matched CN programs;

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown liability as described in WAC 388-519-0100 and 388-519-0110.

(7) Children under the age of nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids health care coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for health care coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family-related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care" for more information.

(8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, Social Security number, and citizenship as described in subsection (2)(a), (b) and (c) of this section are eligible for federally matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if the children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(9) Children are eligible for state-funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally matched CN coverage.

(11) Children under the age of nineteen not eligible for apple health for kids programs listed above may be eligible for one of the following medical assistance programs not included in apple health for kids:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100;

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(c) of this section; and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(d) Home and community based waiver programs as described in chapter 388-515 WAC; or

(e) Alien medical as described in WAC 388-438-0110, if they:

(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;

(ii) Have income more than three hundred percent FPL; or

(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described

in subsection (5) of this section because of creditable coverage.

(12) Except for a child described in subsection (7) of this section, an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any apple health for kids program. (1) Unless otherwise stated in this section, a child is a person who is under nineteen years of age (including the month the person turns nineteen). To be eligible for one of the Washington apple health (WAH) for kids programs described below, a child must:

(a) Be a resident of Washington state, as described in WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number (SSN) as described in WAC 182-503-0515 unless exempt; and

(c) Meet any additional requirements listed for the specific program.

(2) Children under one year of age are eligible for WAH categorically needy (CN) coverage, without a new application, when they are born to a mother who is eligible for WAH:

(a) On the date of the newborn's birth, including a retroactive eligibility determination; or

(b) Based on meeting a medically needy (MN) spenddown liability with expenses incurred no later than the date of the newborn's birth.

(3) Children are eligible for WAH at no cost when they:

(a) Have countable family income that is no more than two hundred ten percent of the federal poverty level (FPL) as described in WAC 182-505-0100;

(b) Are currently eligible for supplemental security income (SSI); or

(c) Received SSI payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions.

(4) Children are eligible for premium-based WAH as described in WAC 182-505-0215 when they:

(a) Have countable family income that is not more than three hundred twelve percent of FPL as described in WAC 182-505-0100;

(b) Do not have other creditable health insurance as described in WAC 182-505-0220; and

(c) Pay the required monthly premiums as described in WAC 182-505-0225.

(5) Children are eligible for WAH home and community based waiver programs as described in chapter 182-515 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0525;

(b) Meet SSI-related eligibility requirements as described in chapter 182-512 WAC; and

(c) Meet program specific age requirements.

(6) Children are eligible for the WAH long-term care program when they meet the institutional program rules as described in chapter 182-513 or 182-514 WAC, and either:

(a) Reside or are expected to reside in a medical institution, intermediate care facility for the intellectually disabled (ICF/ID), hospice care center, or nursing home for thirty days or longer; or

(b) Reside or are expected to reside in an institution for mental diseases (IMD) or inpatient psychiatric facility:

(i) For ninety days or longer and are age seventeen or younger; or

(ii) For thirty days or longer and are age eighteen through twenty-one.

(7) Children are eligible for the WAH-MN program as described in WAC 182-519-0100 when they:

(a) Meet citizenship or immigrant status as described in WAC 182-503-0535;

(b) Have countable family income that exceeds three hundred twelve percent of FPL as described in WAC 182-505-0100; or

(c) Have countable family income that is more than two hundred ten percent of FPL, but are not eligible for premium-based WAH as described in subsection (4) of this section because of creditable coverage; and

(d) Meet a spenddown liability as described in WAC 182-519-0110, if required.

(8) Children are eligible for WAH SSI-related programs as described in chapter 182-512 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0535;

(b) Meet SSI-related eligibility as described in chapter 182-512 WAC; and

(c) Meet an MN spenddown liability as described in WAC 182-519-0110, if required.

(9) Children who are not eligible for WAH under subsections (5) through (8) of this section because of their immigration status, are eligible for the WAH alien emergency medical program if they:

(a) Meet the eligibility requirements of WAC 182-507-0110;

(b) Have countable family income:

(i) That exceeds three hundred twelve percent of FPL as described in WAC 182-505-0100; or

(ii) That is more than two hundred ten percent of FPL, but they are not eligible for premium-based WAH, as described in subsection (4) of this section because of creditable coverage; and

(c) Meet a spenddown liability as described in WAC 182-519-0110, if required.

(10) Children who are in foster care or receive subsidized adoption services are eligible for coverage under the WAH foster care program described in WAC 182-505-0211.

(11) Children who are incarcerated in a public institution (as defined in WAC 182-500-0050), or a city or county jail, are not eligible for any WAH program, with the following exceptions:

(a) Children who reside in an IMD as described in subsection (6) of this section; or

(b) Children who are released from a public institution or city or county jail to a hospital for inpatient treatment. Children who are released from an IMD to a hospital setting must be unconditionally discharged from the IMD to qualify for coverage under this provision.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0215 ~~Washington apple health—Premium-based children's program—Purpose and scope~~ ~~((of premium-based health care coverage under programs included in apple health for kids))~~.** The ~~((department))~~ ~~medicaid agency~~ administers the programs included in Washington apple health (WAH) for kids that provide premium-based coverage through a combination of state and federal funding sources as described below:

(1) Federally matched health care coverage as authorized by Title XXI of the Social Security Act state children's health insurance program ~~((SCHIP))~~ ~~(CHIP)~~ and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred ten percent of the federal poverty level (FPL) but is not above three hundred twelve percent FPL.

(2) State funded health care coverage for children with family income above two hundred ten percent FPL, but not above three hundred twelve percent FPL, who are ineligible for ~~((Title XXI))~~ ~~federally matched health care coverage due to immigration~~ ~~((issues))~~ status.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0225 ~~Premium-based Washington apple health for kids—Premium requirements~~ ~~((for premium-based health care coverage under programs included in apple health for kids))~~.** (1) For the purposes of this chapter, "premium" means an amount paid for ~~((health care))~~ Washington apple health (WAH) coverage ~~((under programs included in apple health))~~ for kids as described in WAC ~~((388-505-0210 (4) and (5)))~~ 182-505-0210(4).

(2) Payment of a premium is required as a condition of eligibility for premium-based WAH coverage ~~((under programs included in apple health))~~ for kids, as described in WAC ~~((388-505-0210 (4) and (5)))~~ 182-505-0210(4), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska Native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for ~~((medical))~~ WAH coverage received in a month or months before the determination of eligibility.

(4) ~~((The premium amount for the assistance unit (AU) is based on the net countable income as described in WAC 388-450-0210 and the number of children in the AU. If the household includes more than one AU, the premium amount billed for the AUs may be different amounts.~~

~~((5)))~~ The premium amount is limited to a monthly maximum of two premiums for ~~((households))~~ families with two or more children.

~~((6)))~~ (5) The premium amount ~~((for each U.S. citizen or lawfully present alien child described in WAC 388-505-0210(4)))~~ is:

(a) Twenty dollars per month per child for ~~((households))~~ families with countable income above two hundred

ten percent FPL, but not above two hundred ~~((and fifty))~~ sixty percent FPL; or

(b) Thirty dollars per month per child for ~~((households))~~ families with countable income above two hundred ~~((and fifty))~~ sixty percent FPL, but not above three hundred twelve percent FPL.

~~((7))~~ (5) ~~The premium amount for each noncitizen child described in WAC 388-505-0210(5) who is not a lawfully present qualified or nonqualified alien is no greater than the average of the state share of the per capita cost for state-funded children's health coverage. The premium amount is set every two years, based on the forecasted per capita costs for that period.~~

~~((8))~~ (6) All children in an assistance unit (AU) are ineligible for ~~((health care))~~ WAH coverage when the ~~((head of household))~~ family fails to pay required premium payments for three consecutive months.

~~((9))~~ (7) When the agency or ~~((the agency's))~~ its designee terminates the ~~((medical))~~ WAH coverage ~~((of a child))~~ due to nonpayment of premiums, the child's eligibility is restored ~~((only))~~ when the:

(a) Past due premiums are paid in full prior to the end of the certification period; or

(b) The child becomes eligible for coverage under ~~((a nonpremium-based CN health care program))~~ WAH without a premium.

~~((10))~~ (8) The agency or ~~((the agency's))~~ its designee writes off past-due premiums after twelve months.

~~((11))~~ (9) If all past due premiums are paid after the certification period is over:

(a) Eligibility for prior months is not restored; and

(b) Children are not eligible for premium-based ~~((coverage under apple health))~~ WAH for kids until:

(i) The month the premiums are paid or the agency writes off the debt; and

(ii) The family reapplies and is found eligible.

~~((12))~~ (10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the AU. The full premium amount is the obligation of the head of household of the AU. A family can decide to request health care coverage only for certain children in the AU, if they want to reduce premium obligation.

~~((13))~~ (11) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (12) A sponsor or other third party may pay the premium on behalf of the child or children in the AU. The premium payment requirement remains the obligation of head of household of the AU. The failure of a sponsor or other third party to pay the premium does not eliminate the obligation of the head of household to pay past due premiums.

AMENDATORY SECTION (Amending WSR 11-23-077, filed 11/15/11, effective 12/16/11)

**WAC 182-505-0235 Washington apple health—Premium-based children's program—Order of payments** ~~((under the premium-based apple health for kids program as funded by Title XXI of the Social Security Act)).~~

The medicaid agency administers ~~((the programs included in))~~ premium-based Washington apple health (WAH) for kids ~~((that provide premium-based))~~ coverage through a combination of state and federal funding sources. For expenditures funded by Title XXI of the Social Security Act (SSA), also known as the children's health insurance program (CHIP), federal financial participation will be sought in compliance with section 2105 ~~((of the act))~~ in the following order:

(1) For ~~((medical assistance))~~ health care coverage for targeted low-income children from birth through age eighteen, as described in section 4 of the Title XXI state plan.

(2) For ~~((medical assistance))~~ health care coverage for unborn children, as described in section 4.1.2.1 of the Title XXI state plan.

(3) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in the Children's Health Insurance Program Reauthorization Act (CHIPRA), section 214.

(4) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in section 2105 (g)(4)(A) and (B) of the ~~((act))~~ SSA.

(5) For allowable administrative expenditures under the ten percent cap, as defined in section 2105 (a)(1)(D) of the ~~((act))~~ SSA in the following order:

(a) First, for reasonable expenditures necessary to administer the plan, including staffing for eligibility determinations, plan administration, quality assurance, and similar costs.

(b) Second, for a toll-free 800 telephone number providing information regarding the Washington apple health for kids program.

(c) Third, for health services initiatives, such as the funding of the Washington poison center, to the extent that state funds are appropriated by the legislature.

(d) Fourth, for translation or interpretation services in connection with the enrollment, retention, or use of services under this title by ~~((individuals))~~ persons for whom English is not their primary language, but only to the extent that state-matching funds are made available.

(e) Fifth, for outreach services for the Washington apple health for kids program, to the extent that appropriated state-matching funds are available.

(f) Sixth, for other CMS-approved activities to the extent that federal matching funds are available, and where such activities do not duplicate efforts conducted under this subsection.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0237 Premium-based Washington apple health for kids—Other rules that apply** ~~((to premium-based health care coverage under programs included in apple health for kids)).~~ In addition to the rules of this chapter, children receiving premium-based ~~((coverage under))~~ Washington apple health (WAH) for kids are subject to the following rules:

(1) Chapter ~~((388-538))~~ 182-538 WAC, Managed care (except WAC ~~((388-538-061))~~ 182-538-061, ~~((388-538-~~

063)) 182-538-063, and ((388-538-065)) 182-538-065) if the child is covered under federally matched CN coverage;

(2) WAC ((388-505-0210 (4) and (5), apple health for kids program eligibility;

(3) WAC 388-505-0211, Premium requirements for premium-based coverage under programs included in apple health for kids;

(4) WAC 388-416-0015(12)) 182-504-0015, Certification periods for categorically needy (CN) scope of care medical assistance programs; and

((5)) (3) WAC ((388-418-0025)) 182-504-0125, Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0240 ((Family medical eligibility-))**  
**Washington apple health—Parents and caretaker relatives.** (1) A person is eligible for Washington apple health (WAH) categorically needy (CN) ((medical assistance)) coverage when ((they are)) he or she:

(a) ((Receiving temporary assistance for needy families (TANF) cash benefits;

(b) Receiving Tribal TANF;

(c) ~~Receiving cash diversion assistance, except SFA~~ relatable families, described in WAC 388-400-0010(2);

(d) ~~Eligible for TANF cash benefits but choose not to receive;~~

(e) ~~Over the TANF cash payment standard but under the family medical payment standard as described in WAC 388-478-0065; or~~

(f) ~~Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:~~

(i) ~~Earned income is treated as described in WAC 388-450-0210; and~~

(ii) ~~Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.~~

(2) ~~An adult cannot receive a family medicaid program unless the household includes a child who is eligible for:~~

(a) ~~Family medicaid;~~

(b) ~~SSI; or~~

(c) ~~Children's medicaid.~~

(3) ~~A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:~~

(a) ~~Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;~~

(b) ~~Failed to meet the school attendance requirement in chapter 388-400 WAC;~~

(c) ~~Is an unmarried minor parent who is not in a department approved living situation;~~

(d) ~~Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed one hundred eighty days;~~

(e) ~~Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;~~

(f) ~~Was convicted of a drug related felony;~~

(g) ~~Was convicted of receiving benefits unlawfully;~~

(h) ~~Was convicted of misrepresenting residence to obtain assistance in two or more states;~~

(i) ~~Has gross earnings exceeding the TANF gross income level; or~~

(j) ~~Is not cooperating with WorkFirst requirements.~~

(4) ~~An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.~~

(5) ~~Except for a client described in WAC 388-505-0210(6), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage-))~~ Is a parent or caretaker relative of a dependent child who meets the criteria described in WAC 182-503-0565(2);

(b) Meets citizenship and immigration status requirements described in WAC 182-503-0505;

(c) Meets general eligibility requirements described in WAC 182-503-0535; and

(d) Has countable income below fifty-four percent of the federal poverty level (FPL).

(2) To be eligible for WAH coverage as a caretaker relative, a person must be related to a dependent child who meets the criteria described in WAC 182-503-0565(2).

(3) A person must cooperate with the state of Washington in the identification, use and collection of medical support from responsible third parties as described in WAC 182-503-0540.

(4) A person who does not cooperate with the requirements in subsection (3) of this section is not eligible for WAH coverage.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-505-0220 Definitions for premium-based health care coverage under programs included in apple health for kids.

WAC 182-505-0230 Waiting period for premium-based health care coverage under programs included in apple health for kids following employer coverage.

WAC 182-505-0245 Income and resource standards for family medical programs.

WAC 182-505-0515 Medical coverage resulting from a cash grant.

#### NEW SECTION

**WAC 182-505-0250 Washington apple health—MAGI-based adult medical.** (1) Effective on or after January 1, 2014, a person is eligible for Washington apple health (WAH) modified adjusted gross income (MAGI)-based adult coverage when he or she meets the following requirements:

(a) Is age nineteen or older and under the age of sixty-five;

(b) Is not entitled to, or enrolled in, medicare benefits under Part A or B of Title XVIII of the Social Security Act;

(c) Is not otherwise eligible for and enrolled in mandatory coverage under one of the following programs:

(i) WAH SSI-related categorically needy (CN);

(ii) WAH foster care program; or

(iii) WAH adoption support program;

(d) Meets citizenship and immigration status requirements described in WAC 182-503-0535;

(e) Meets general eligibility requirements described in WAC 182-503-0505; and

(f) Has net countable income that is at or below one hundred thirty-three percent of the federal poverty level for a household of the applicable size.

(2) Parents or caretaker relatives of an eligible dependent child as described in WAC 182-503-0565 are first considered for WAH for families as described in WAC 182-505-0240. A person whose countable income exceeds the standard to qualify for family coverage is considered for coverage under this section.

(3) Persons who are eligible under this section are eligible for WAH alternative benefit plan as defined in WAC 182-500-0010 coverage. A person described in this section is not eligible for medically needy WAH.

(4) Other coverage options for adults not eligible under this section are described in WAC 182-508-0001.

### Chapter 182-518 WAC

#### WASHINGTON APPLE HEALTH—LETTERS AND NOTICES

##### NEW SECTION

**WAC 182-518-0005 Washington apple health—Notice requirements—General.** (1) For the purposes of this chapter, "we" refers to the agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.

(2) This section applies only to notices and letters that we send about eligibility for Washington apple health (WAH) programs. WAC 182-501-0165 applies to notices and letters regarding prior authorization or other action on requests to cover specific fee-for-service health care services.

(3) We send you written notices (letters) when we:

(a) Approve you for health care coverage for any program;

(b) Reconsider your application for other types of health care coverage based on new information;

(c) Deny you health care coverage (including because you withdrew your application) for any program (according to rules in WAC 182-503-0080);

(d) Ask you for more information to decide if you can start or renew health care coverage;

(e) Renew your health care coverage; or

(f) Change or terminate your health care coverage, even if we approve you for another kind of coverage.

(4) If you are receiving limited-English proficient services, we send notices to you in your primary language

according to the rules in WAC 182-503-0110. If you are receiving equal access services, we follow the equal access rules described in WAC 182-503-0120.

(5) All WAH notices we send you include the following information:

(a) The date of the notice;

(b) Specific contact information for you if you have questions or need help with the notice;

(c) Your appeal rights, if an appeal is available, and the availability of potentially free legal assistance; and

(d) Other information required by state or federal law.

##### NEW SECTION

**WAC 182-518-0010 Washington apple health—Notice requirements approval and denial notices.** (1) We send written notice when we approve, reopen, reinstate, or deny coverage for any Washington apple health (WAH) program. The notice includes the information described in WAC 182-518-0005(4) and all of the following:

(a) The WAH coverage for each person approved, reopened or reinstated;

(b) The date that each person's coverage begins (the effective date); and

(c) The dates for which we approved each person's coverage (certification period).

(2) Denial and withdrawal notices include:

(a) The date of denial;

(b) Specific facts and reason(s) supporting the decision; and

(c) Specific rules or statutes that support or require the decision.

(3) If we deny your request for health care coverage or consider it withdrawn because you failed to give us requested information, the denial notice also includes:

(a) A list of the information you did not give us;

(b) The date we asked you for the information and the date it was due;

(c) Notice that we will reconsider your eligibility if we receive any information related to determining your eligibility, including any changes to information we have, within thirty days of the date of the notice; and

(d) Information described in subsection (1) of this section.

##### NEW SECTION

**WAC 182-518-0015 Washington apple health—Notice requirements verification requests.** (1) We send you written notice when we need more information as described in WAC 182-503-0050 to decide if you are eligible to receive or continue receiving Washington apple health (WAH) coverage. The notice includes:

(a) A description or list of the information that we need;

(b) When we must have the information (see WAC 182-503-0060 for applications and WAC 182-504-0035 for renewals);

(c) What action we will take and on what date, if we do not receive the information; and

(d) Information required in WAC 182-518-0005(4).

(2) If we have received conflicting information about facts we need to determine your coverage, the notice will also include:

(a) The information we received that does not match what you gave us and the source; and

(b) A request that you send us a statement explaining the difference(s) between the information from you and the information from the other source.

(3) We allow you at least ten days to return the information. If you ask, we may allow you more time to get us the information. If the tenth day falls on a weekend or holiday, the due date is the next business day.

(4) If the information we ask for costs money, we will pay for it or help you get the information in another way.

#### NEW SECTION

**WAC 182-518-0020 Washington apple health—Notice requirements—Renewals.** (1) We send you written notice before we stop your WAH coverage at the end of your certification period as described in WAC 182-504-0035.

(2) When we can administratively renew your coverage (as defined in WAC 182-500-0010), the notice includes:

(a) Your new certification period;

(b) The information we used to renew your coverage; and

(c) A request for you to give us updated information, if any of the information we used is inaccurate.

(3) When we cannot administratively renew your coverage, the notice includes:

(a) Information we currently have on record;

(b) How to complete the renewal using any of the methods described in WAC 182-504-0035 (1)(b);

(c) What action we will take on what date if we do not receive your completed renewal application on time; and

(d) That we follow the rules in WAC 182-518-0015.

(4) We send your renewal notice following the timeline in:

(a) WAC 182-504-0035(2) for programs based on modified adjusted gross income (MAGI); or

(b) WAC 182-504-0035(3) for non-MAGI based programs.

#### NEW SECTION

**WAC 182-518-0025 Washington apple health—Notice requirements—Changes in and terminations of coverage.** (1) We send you written notice before your Washington apple health (WAH) coverage changes or ends. The notice includes:

(a) The change in coverage;

(b) The date your coverage will change or end;

(c) Specific facts and reason(s) for the decision;

(d) Specific rules the decision is based on; and

(e) Information found in WAC 182-518-0005(4).

(2) Before we send any notices to end your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we determine if you are eligible for other health care coverage as described in WAC 182-504-0125.

(3) We notify you at least ten days before we change or end your health care coverage. The ten days start on the day we send you the notice and end on the tenth day. We are not required to give ten days' notice if:

(a) You asked us to change or end your coverage;

(b) We are changing or ending your coverage due only to a change in law;

(c) We are ending your coverage because everyone in your household either died or has been accepted to receive medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);

(d) We are ending your coverage because mail we sent you was returned to us with no forwarding address; or

(e) You are incarcerated and it is expected to last more than thirty days.

(4) If we do not have to give ten days' advance notice, we send the notice right away after getting the information that caused the change, but no later than the date we took the action the notice is about.

(5) You may request an appeal if you disagree with our decision to change or end your health care coverage and you may request continued coverage as described in WAC 182-504-0130.

#### NEW SECTION

**WAC 182-518-0030 Washington apple health—Notice requirements—Electronic notices.** (1) We send you letters (notices) to inform you about your eligibility for Washington apple health (WAH) programs as described in WAC 182-518-0005 through 182-518-0025.

(2) For programs based on modified adjusted gross income (MAGI), you have the right to choose to get WAH eligibility notices by regular mail, in an electronic format, or both.

(3) To receive electronic notices you must:

(a) Have an account with Washington Healthplanfinder. (There is no charge to create an account); and

(b) Provide us with the following information: A valid e-mail address, your name, and your application identification number.

(4) You may ask to receive WAH notices electronically by:

(a) Mailing, delivering, or giving us a written letter to the address listed on our web site;

(b) Sending a facsimile letter to us as directed on our web site;

(c) Calling the WAH customer service center at the number listed on our web site;

(d) Logging on to your Healthplanfinder account online and selecting the "I would prefer to receive written communications by e-mail" check box on the contact information page; or

(e) Calling the Healthplanfinder customer support center.

(5) When you have asked for electronic notification, we:

(a) Send the notice to your Healthplanfinder account no later than one business day after creating the notice.



(b) Send you an e-mail message to notify you when a new WAH notice has been sent electronically to your Healthplanfinder account.

(i) The e-mail message will not include the notice, information about the content of the notice, or other confidential information; and

(ii) You must log on to your Healthplanfinder account to get the notice.

(6) We will stop sending WAH notices electronically to you if you ask us. You must notify us if your e-mail address changes.

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 1, Repealed 0.

Date Adopted: May 23, 2014.

Kevin M. Sullivan  
Rules Coordinator

### WSR 14-12-016

#### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed May 23, 2014, 10:56 a.m., effective May 28, 2014]

Effective Date of Rule: May 28, 2014.

Purpose: **Medicaid Expansion Rules – Phase 4.7.** The health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Amending WAC 182-508-0001.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

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: This emergency rule is necessary to continue the current emergency rule adopted under WSR 14-04-058 which implements the requirements of the Affordable Care Act, including the expansion of medicaid. The agency has been working diligently with client advocates and other stakeholders to complete the permanent rule-making process. The agency anticipates filing a CR-102 this month and holding a public hearing on June 24, 2014.

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

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

#### NEW SECTION

**WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors.** (1) A pregnant minor who meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525 is eligible for the Washington apple health (WAH) for kids program.

(2) The medical assistance unit (MAU) of a pregnant minor is the pregnant minor.

(3) There are no income standards and no resource tests for a pregnant minor to be eligible for WAH for kids.

(4) To ensure reimbursement from the U.S. Department of Health and Human Services, every pregnant minor applicant for WAH for kids must provide her Social Security number, if she has one, and her citizenship or immigration status. The immigration status of a pregnant minor who is an undocumented alien (see WAC 182-503-0530) will not be disclosed to any third party.

(5) The assignment of rights as described in WAC 182-503-0540 does not apply to pregnant minors.

(6) A pregnant minor covered by the WAH for kids program will have a one year certification period unless she has her nineteenth birthday during her pregnancy, at which time she will be automatically enrolled in the WAH for pregnant women program. Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be eligible for extended medical coverage for postpartum care through the end of the month of the sixtieth day after the end of her pregnancy.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-508-0001 (~~Medical assistance coverage~~) Washington apple health—Coverage options for adults not (~~covered under family medical programs~~) eligible under MAGI methodologies.** (~~((1) An adult who does not meet the institutional status requirements as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for categorically needy (CN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for CN coverage when the individual:~~

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and

(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010; and

(c) Is sixty-five years of age or older, or meets the blind and/or disability criteria of the federal SSI program.

(2) An adult not meeting the conditions of subsection (1)(b) of this section is eligible for CN medical coverage if the individual:

(a) Is a current beneficiary of Title II of the Social Security Act (SSA) benefits who:

(i) Was a concurrent beneficiary of Title II and supplemental security income (SSI) benefits;

(ii) Is ineligible for SSI benefits and/or state supplemental payments (SSP); and

(iii) Would be eligible for SSI benefits if certain cost-of-living (COLA) increases are deducted from the client's current Title II benefit amount:

(A) All Title II COLA increases under P.L. 94-566, section 503 received by the individual since their termination from SSI/SSP; and

(B) All Title II COLA increases received during the time period in (d)(iii)(A) of this subsection by the individual's spouse or other financially responsible family member living in the same household.

(b) Is an SSI beneficiary, no longer receiving a cash benefit due to employment, who meets the provisions of section 1619(b) of Title XVI of the SSA;

(c) Is a currently disabled individual receiving widow's or widower's benefits under section 202 (e) or (f) of the SSA if the disabled individual:

(i) Was entitled to a monthly insurance benefit under Title II of the SSA for December 1983;

(ii) Was entitled to and received a widow's or widower's benefit based on a disability under section 202 (e) or (f) of the SSA for January 1984;

(iii) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the individual;

(iv) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the SSA;

(v) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent COLA increases provided under section 215(i) of the SSA, were disregarded;

(vi) Is fifty through fifty-nine years of age; and

(vii) Filed an application for medicaid coverage before July 1, 1988.

(d) Was receiving, as of January 1, 1991, Title II disabled widow or widower benefits under section 202 (e) or (f) of the SSA if the individual:

(i) Is not eligible for the hospital insurance benefits under medicare Part A;

(ii) Received SSI/SSP payments in the month before receiving such Title II benefits;

(iii) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(iv) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent COLA increases provided under section 215(i) of the act were disregarded.

(e) Is a disabled or blind individual receiving Title II Disabled Adult Childhood (DAC) benefits under section 202(d) of the SSA if the individual:

(i) Is at least eighteen years old;

(ii) Lost SSI/SSP benefits on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(iii) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the DAC and any subsequent COLA increases provided under section 215(i) of the SSA were disregarded.

(f) Is an individual who:

(i) In August 1972, received:

(A) Old age assistance (OAA);

(B) Aid to blind (AB);

(C) Aid to families with dependent children (AFDC); or

(D) Aid to the permanently and totally disabled (APTD);

and

(ii) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(iii) Is eligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(3) An adult who does not meet the institutional status requirement as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for medically needy (MN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for MN coverage when the individual:

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and

(b) Has MN countable income that does not exceed the income standards in WAC 182-512-0010, or meets the excess income spenddown requirements in WAC 388-519-0110; and

(c) Meets the countable resource standards in WAC 182-519-0050; and

(d) Is sixty-five years of age or older or meets the blind and/or disability criteria of the federal SSI program.

(4) MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 388-519-0100 for additional information.

(5) An adult may be eligible for the alien emergency medical program as described in WAC 182-507-0110.

(6) An adult is eligible for the aged, blind, or disabled program when the individual:

(a) Meets the requirements of the aged, blind, or disabled program in WAC 388-400-0060 and 388-478-0033; or

(b) Meets the SSI-related disability standards but cannot get the SSI cash grant due to immigration status or sponsor deeming issues. An adult may be eligible for aged, blind, or disabled cash benefits and CN medical coverage due to different sponsor deeming requirements.

(7) An adult is eligible for the medical care services (MCS) program when the individual:

(a) Meets the requirements under WAC 182-508-0005;

or

~~(b) Meets the aged, blind, or disabled requirements of WAC 388-400-0060 and is a qualified alien as defined in WAC 388-424-0001 who is subject to the five-year bar as described in WAC 388-424-0006(3); or a nonqualified alien as defined in WAC 388-424-0001; or~~

~~(c) Meets the requirements of the ADATSA program as described in WAC 182-508-0320 and 182-508-0375.~~

~~(8) An adult receiving MCS who resides in a county designated as a mandatory managed care plan county must enroll in a plan, pursuant to WAC 182-538-063.)~~ (1) This chapter provides information on eligibility determinations for adults who:

(a) Need a determination of eligibility on the basis of being aged, blind, or disabled;

(b) Need a determination of eligibility based on the need for long-term institutional care or home and community-based services;

(c) Are excluded from coverage under a modified adjusted gross income (MAGI)-based program as referenced in WAC 182-503-0510 on the basis of medicare entitlement;

(d) Are not eligible for health care coverage under chapter 182-505 WAC due to citizenship or immigration requirements; or

(e) Are not eligible for health care coverage under chapter 182-505 WAC due to income which exceeds the applicable standard for coverage.

(2) The agency determines eligibility for Washington apple health (WAH) noninstitutional categorically needy (CN) coverage under chapter 182-512 WAC for an adult who is age sixty-five or older, or who meets the federal blind or disabled criteria of the federal SSI program, and:

(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC; and

(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010.

(3) The agency determines eligibility for WAH health care for workers with disabilities (HWD) CN coverage for adults who meet the requirements described in WAC 182-511-1050, as follows:

(a) Are age sixteen through sixty-four;

(b) Meet citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC;

(c) Meet the federal disability requirements described in WAC 182-511-1150;

(d) Have net income that does not exceed the income standard described in WAC 182-511-1060; and

(e) Are employed full- or part-time (including self-employment) as described in WAC 182-511-1200.

(4) The agency determines eligibility for WAH long-term care CN coverage for adults who meet the institutional status requirements defined in WAC 182-513-1320 under the following rules:

(a) When the person receives coverage under a MAGI-based program and needs long-term care services in an institution, the agency follows rules described in chapter 182-514 WAC;

(b) When the person meets aged, blind, or disabled criteria as defined in WAC 182-512-0050 and needs long-term care services, the agency follows rules described in:

(i) Chapter 182-513 WAC, for an adult who resides in an institution; and

(ii) Chapter 182-515 WAC, for an adult who is determined eligible for WAH home and community-based waiver services.

(5) The agency determines eligibility for WAH noninstitutional CN or medically needy (MN) health care coverage for an adult who resides in an alternate living facility under rules described in WAC 182-513-1305.

(6) The agency determines eligibility for WAH-CN coverage under institutional rules described in chapters 182-513 and 182-515 WAC for an adult who:

(a) Has made a voluntary election of hospice services;

(b) Is not otherwise eligible for noninstitutional CN or MN health care coverage or for whom hospice is not included in the benefit service package available to the person; and

(c) Meets the aged, blind, or disabled criteria described in WAC 182-512-0050.

(7) The agency uses the following rules to determine eligibility for an adult under the WAH-MN program:

(a) Noninstitutional WAH-MN is determined under chapter 182-519 WAC for an adult with countable income that exceeds the applicable CN standard; and

(b) WAH-MN long-term care coverage is determined under WAC 182-514-0255 for an adult age nineteen or twenty who:

(i) Meets institutional status requirements described in WAC 182-513-1320;

(ii) Does not meet blind or disabled criteria described in WAC 182-512-0050; and

(iii) Has countable income that exceeds the applicable CN standard.

(c) WAH-MN long-term care coverage is determined under WAC 182-513-1395 for an aged, blind, or disabled adult who resides in an institution and has countable income that exceeds the special income level (SIL).

(8) An adult is eligible for WAH-MN coverage when he or she:

(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in WAC 182-503-0505;

(b) Has MN countable income that does not exceed the effective MN income standards in WAC 182-519-0050, or meets the excess income spenddown requirements in WAC 182-519-0110;

(c) Meets the countable resource standards in WAC 182-519-0050; and

(d) Is sixty-five years of age or older or meets the blind or disabled criteria of the federal SSI program.

(9) WAH-MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 182-519-0100 for additional information.

(10) An adult who does not meet citizenship or alien status requirements described in WAC 182-503-0535 may be eligible for the WAH alien emergency medical program as described in WAC 182-507-0110.

(11) An adult is eligible for the state-funded medical care services (MCS) program when he or she meets the requirements under WAC 182-508-0005.

(12) A person who is entitled to medicare is eligible for coverage under a medicare savings program or the state-funded buy-in program when he or she meets the requirements described in chapter 182-517 WAC.

**WSR 14-12-017**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-124—Filed May 23, 2014, 11:21 a.m., effective May 28, 2014]

Effective Date of Rule: May 28, 2014.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 2014 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 the pot fishery season for nonspot shrimp in Shrimp Management Area 2E, as the quota will be reached; (2) implements a trip limit of three hundred pounds in Area 2E; and (3) opens the beam trawl fishery in Shrimp Management Area[s] 1B-20B on June 16. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 23, 2014.

Philip Anderson  
Director

NEW SECTION

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

(1) Shrimp pot gear:

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

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

(ii) All waters of Shrimp Management Area 1A north of a line projected at 48° 31.5' N latitude are closed.

(iii) Effective 6:00 p.m. May 31, 2014, all waters of Shrimp Management Area 2E are closed.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 1,000 pounds per week from Shrimp Management Areas 1A, 1B, 1C and 2W.

(c) Effective immediately until 6:00 p.m. May 31, 2014, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 300 pounds from Shrimp Management Area 2E.

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

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

(2) Shrimp beam trawl gear:

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

(b) Effective immediately until further notice, that portion of Catch Area 22A within SMA 1B is open.

(c) Effective 6:00 a.m. June 16, 2014, that portion of Catch Area 20B within SMA 1B is open.

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

**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 11:59 p.m. May 27, 2014:

WAC 220-52-05100N Puget Sound shrimp pot and beam trawl fishery—Season. (14-88)

**WSR 14-12-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-123—Filed May 23, 2014, 4:56 p.m., effective May 23, 2014,  
4:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-56-33000M; and amending WAC 220-56-330.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: This emergency rule is needed to set the 2014 summer recreational crab fishery in waters of Puget Sound. Also, the season start date and weekly schedule in Marine Area 13 was adjusted to provide additional harvest opportunity in the summer months. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 23, 2014.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-56-33000M Crab—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-330, effective immediately until further notice, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided below:

(1) Marine Area 13: Effective June 1, 2014, through 11:59 p.m. September 1, 2014, it is permissible to fish for crab seven days a week.

(2) Effective July 3 through September 1, 2014, it is permissible to fish for crab Thursdays through Mondays in Marine Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 8-1, 8-2, 9, 10, 11, and 12.

(3) Effective July 17 through 11:59 p.m. September 29, 2014, it is permissible to fish for crab Thursdays through Mondays in those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence due west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island.

(4) Effective August 15 through 11:59 p.m. September 29, 2014, it is permissible to fish for crab Thursdays through Mondays in those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island due west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective September 30, 2014:

WAC 220-56-33000M Crabs—Areas and seasons.

**WSR 14-12-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-125—Filed May 27, 2014, 3:13 p.m., effective May 28, 2014,  
6:00 a.m.]

Effective Date of Rule: May 28, 2014, 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 220-32-05100A; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 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 a second treaty commercial gillnet season for salmon. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6. Sales of fish landed in the area downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area is lawfully open for sales under tribal regulations. Similarly, the sale of fish caught in Yakama Nation tributary fisheries are allowed when open under Yakama Nation regulations. Harvestable upriver spring chinook fish are available to the treaty tribes based on the current in-season run size estimate. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5 and May 27, 2014. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: May 27, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

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

- (1) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
  - (a) Season: 6:00 a.m. May 28 to 6:00 p.m. May 31, 2014.
  - (b) Gear: Gillnets only.
  - (c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.
  - (d) All sanctuaries for this gear type in effect, except Spring Creek.
- (2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
  - (a) Season: Immediately until further notice.
  - (b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
  - (c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.
  - (d) All dam sanctuaries for these gear types are in effect.
- (3) Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.
  - (a) Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agree-

ment (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately until further notice. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(4) Columbia River Tributaries upstream of Bonneville Dam

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

(b) Area: Drano Lake, Wind River and Klickitat River.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only.

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. May 28, 2014:

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam. (14-117)

**WSR 14-12-032**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-126—Filed May 28, 2014, 11:48 a.m., effective May 28, 2014, 6:00 p.m.]

Effective Date of Rule: May 28, 2014, 6:00 p.m.

**Purpose:** The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

**Citation of Existing Rules Affected by this Order:** Repealing WAC 220-33-01000S; and amending WAC 220-33-010.

**Statutory Authority for Adoption:** RCW 77.04.012, 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:** Opens a twelve hour mainstem commercial fishery in Zones 1-5. The upriver spring chinook run size has been updated to 230,000 fish, which increases the number of fish available for harvest. This rule continues to implement the "adaptive management" clause in Policy C-3620 by allowing the use of eight inch gear. With the increasing abundance of shad in the river the intercept rate of shad with tanglenet gear is exceedingly high. In an effort to maintain a high level of conservation, a fishing period with eight inch gear was allowed to minimize the interception of shad and therefore keep the drift time within the forty-five minute limit allowed. Upriver spring chinook mortalities are expected to remain within the ESA and catch balance limits allowed. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. This rule is consistent with compact action of January 29 and May 27, 2014. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the fed-

eral ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt rules reflecting agreements reached.

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

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

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

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

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

Date Adopted: May 28, 2014.

Joe Stohr  
for Philip Anderson  
Director

## NEW SECTION

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

### **(1) Mainstem Columbia River**

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

(b) **Dates:** 6:00 p.m. May 28 to 6:00 a.m. May 29, 2014.

(c) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad.

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

(e) **Gear:** Drift nets only. 8-inch minimum mesh: Net length not to exceed 150 fathoms.

### **(f) Miscellaneous:**

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

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

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

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

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

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

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

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

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

### **(2) Deep River Select Area**

(a) **Dates:** Monday and Thursday nights immediately through June 13, 2014. Open hours are 7 PM to 7 AM.

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



(c) **Gear:** Gillnets only. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. It is permissible to use additional weights or anchors attached directly to the leadline.

Nets cannot be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules of the department (WAC 220-20-010(17)).

(d) **Allowable Possession:** Salmon and shad.

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

### (3) Tongue Point/South Channel

(a) **Dates:** Monday and Thursday nights from immediately through June 13, 2014. Open hours are 7:00 PM to 7:00 AM,

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

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

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

(d) **Allowable Possession:** Salmon and shad.

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

(f) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department when notified by the observer of his or her

intent to board the commercial vessel for observation and sampling during an open fishery.

### (4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday and Thursday nights immediately through June 13, 2014. Open hours are 7:00 PM to 7:00 AM.

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

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

(d) **Allowable Possession:** Salmon and shad.

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

### (5) For all fisheries described above (Sections 1-4):

(a) **24-hour** quick reporting is required for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules apply.

(b) **Multi net rule in effect:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

(c) **Lighted buoys required:** Nets fished at times between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

**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.

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

## REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. May 28, 2014:

WAC 220-33-01000S Columbia River seasons below Bonnevile. (14-109)

## WSR 14-12-033

### EMERGENCY RULES

### LIQUOR CONTROL BOARD

[Filed May 28, 2014, 12:03 p.m., effective May 28, 2014, 12:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: As part of Initiative 502, third-party testing labs must be certified by the liquor control board or its vendor as meeting the board's accreditation and other requirements prior to conducting quality assurance testing on marijuana

and marijuana infused products. This rule is needed immediately as there are labs waiting for accreditation.

Statutory Authority for Adoption: RCW 69.50.345.

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: Immediate adoption of this rule is necessary for the preservation of the public health and safety. Labs must be properly accredited to perform quality assurance testing of marijuana that the public will consume.

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

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

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

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

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

Date Adopted: May 28, 2014.

Sharon Foster  
Chairman

NEW SECTION

**WAC 314-55-103 Good laboratory practice checklist.** A third-party testing lab must be certified by the WSLCB or its vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the board or its vendor to certify third-party testing labs:

ORGANIZATION	Document Reference	Y	N	NA	Comments
1. The laboratory or the organization of which it is part shall be an entity that can be held legally responsible.					
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.					
a. If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.					
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.					
4. The laboratory is responsible for all costs of initial certification and ongoing site assessments.					
5. The laboratory must agree to site assessments every two years to maintain certification.					
6. The laboratory must allow WSLCB staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.					

ORGANIZATION	Document Reference	Y	N	NA	Comments
7. The laboratory must report all test results directly into WSLCB's traceability system within twenty-four hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.					
HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
8. Job descriptions for owners and all employees: Key staff.					
9. Qualifications of owners and staff: CVs for staff on file.					
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.					
b. Documentation that the scientific director meets the requirements of WSLCB rules.					
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.					
d. Written documentation of delegation of responsibilities (assigned under chapter 314-55 WAC as related to quality assurance testing) to qualified personnel, signed and dated by the laboratory director.					
e. Documentation of employee competency: Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.					
f. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.					
10. Written and documented system detailing the qualifications of each member of the staff.					
a. The need to require formal qualification or certification of personnel performing certain specialized activities shall be evaluated and implemented where necessary.					

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
11. Standard operating procedure manual that details records of internal training provided by facility for staff. Laboratory director must approve, sign and date each procedure.					
a. Instructions on regulatory inspection and preparedness.					
b. Instruction on law enforcement interactions.					
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.					
d. Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS sheets and the use of appropriate PPE.					
e. Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.					
f. Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.					
g. Biosafety and sterile technique training.					

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
12. As appropriate, laboratory operations covered by procedures shall include but not be limited to the following: <ul style="list-style-type: none"> <li>a. Environmental, safety and health activities;</li> <li>b. Sample shipping and receipt;</li> <li>c. Laboratory sample chain of custody and material control;</li> <li>d. Notebooks/logbooks;</li> <li>e. Sample storage;</li> <li>f. Sample preparation;</li> <li>g. Sample analysis;</li> <li>h. Standard preparation and handling;</li> <li>i. Post-analysis sample handling;</li> <li>j. Control of standards, reagents and water quality;</li> <li>k. Cleaning of glassware;</li> <li>l. Waste minimization and disposition.</li> </ul>					
13. The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested:					

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
a. Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy); b. Unique terminology used; c. Summary of method; d. Interferences/limitations; e. Approaches to address background corrections; f. Apparatus and instrumentation; g. Reagents and materials; h. Hazards and precautions; i. Sample preparation; j. Apparatus and instrumentation setup; k. Data acquisition system operation; l. Calibration and standardization; m. Procedural steps; n. QC parameters and criteria; o. Statistical methods used; p. Calculations; q. Assignment of uncertainty; r. Forms used in the context of the procedure.					
FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
14. Allocation of space: Adequate for number of personnel and appropriate separation of work areas.					
15. Arrangement of space.					
a. Allows for appropriate work flow, sampling, lab space separate from office and break areas.					
b. Employee bathroom is separate from any laboratory area.					
16. Adequate eyewash/safety showers/sink.					
17. Procurement controls.					
a. The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, receipt and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.					
b. The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.					
c. Prospective suppliers shall be evaluated and selected on the basis of specified criteria.					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
d. Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.					
e. When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.					
18. Utilities.					
a. Electrical: i. Outlets: Adequate, unobstructed, single use, no multi-plug adaptors; ii. No extension cords; iii. Ground fault circuit interrupters near wet areas.					
b. Plumbing: i. Appropriateness of sink usage: Separate for work/personal use; ii. Adequate drainage from sinks or floor drains; iii. Hot and cold running water.					
c. Ventilation: i. Areas around solvent use or storage of waste solvent; ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet.					
d. Vacuum: i. Appropriate utilities/traps for prevention of contamination.					
e. Shut-off controls: Located outside of the laboratory.					
19. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097, Marijuana waste disposal—Liquids and solids.					
20. Equipment list.					
a. Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include: i. Name; ii. Serial number or unique identification; iii. Date received and placed in service; iv. Current location; v. Condition at receipt; vi. Manufacturer's instructions; vii. Date of calibration or date of next calibration; viii. Maintenance; ix. History of malfunction.					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
21. Maintenance.					
a. Regular preventive maintenance of equipment demonstration in logbook including, but not limited to: Thermometer calibration, pipette calibrations, analytical balances, and analytical equipment. Documentation of a schedule and reviewed by the laboratory director.					
b. Documentation of curative maintenance in logbook, signed and dated by laboratory director.					
c. Temperature maintenance log book for refrigerators.					
d. Decontamination and cleaning procedures for: i. Instruments; ii. Bench space; iii. Ventilation hood.					
e. Documentation of adequacy of training of personnel and responsibility for each maintenance task.					
f. The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.					
22. Computer systems.					
a. Adequate for sample tracking.					
b. Adequate for analytical equipment software.					
c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.					
d. In addition, procedures for software control shall address the security systems for the protection of applicable software.					
e. For laboratory-developed software, a copy of the original program code shall be: i. Maintained; ii. All changes shall include a description of the change, authorization for the change; iii. Test data that validates the change.					
f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.					
g. Testing may consist of performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.					
h. The version and manufacturer of the software shall be documented.					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
i. Commercially-available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.					
23. Security.					
a. Written facility security procedures during operating and nonworking hours.					
b. Roles of personnel in security.					
c. SOP for controlled access areas and personnel who can access.					
d. Secured areas for log-in of sample, and for short and long-term storage of samples.					
24. Storage.					
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.					
b. Adequate storage of chemical reference standards.					
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.					
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.					
QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
25. Sampling/sample protocols: Written and approved by the laboratory director.					
a. Demonstrate adequacy of the chain-of-custody tracking upon receipt of sample including all personnel handling the sample.					
b. Sampling method (representative of an entire batch) including, but not limited to, homogenization, weighing, labeling, sample identifier (source, lot), date and tracking.					
c. Condition of the sample: Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.					
d. Failed inspection of product: Tracking and reporting.					
e. Return of failed product documentation and tracking.					



QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
f. Disposal of used/unused samples documentation.					
g. Sample preparation, extraction and dilution SOP.					
h. Demonstration of recovery for samples in various matrices (SOPs): i. Plant material - Flower; ii. Edibles (solid and liquid meant to be consumed orally); iii. Topical; iv. Concentrates.					
26. Data protocols.					
a. Calculations for quantification of cannabinoid content in various matrices - SOPs.					
b. Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.					
c. Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.					
d. Documentation that the value reported in the CA is within the range and limitations of the analytical method.					
e. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.					
f. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.					
g. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.					
27. Chemical assay procedure/methodology.					
28. Proficiency:					
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.					
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.					
c. Demonstration of calibration curve $r^2$ value of no less than 0.995 with a minimum of four points within the range.					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
d. Documentation of any proficiency testing as it becomes available. Laboratory director must review, evaluate and report to the WSLCB any result that is outside the stated acceptable margin of error.					
29. Method validation: Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation; <b>or</b>					
30. Level II validation of methodology used for quantification of THC, THCA and CBD for total cannabinoid content (if reporting other cannabinoids, the method must also be validated for those compounds):					
a. Single lab validation parameters are demonstrated for GC, HPLC data review: <ul style="list-style-type: none"> <li>i. Linearity of reference standards;</li> <li>ii. Use of daily standard curve;</li> <li>iii. Accuracy;</li> <li>iv. Precision;</li> <li>v. Recovery (5 determinations not less than 90%);</li> <li>vi. Reproducibility over time within a relative standard deviation of 5%.</li> </ul>					
b. Dynamic range of the instrumentation: Limits of quantification (LOQ) and limits of detection (LOD).					
c. Matrix extensions for each type of product tested, data review of recovery for: <ul style="list-style-type: none"> <li>i. Solvent-based extract;</li> <li>ii. CO<sub>2</sub> extraction or other "hash oil";</li> <li>iii. Extract made with food grade ethanol;</li> <li>iv. Extract made with food grade glycerin or propylene glycol;</li> <li>v. Infused liquids;</li> <li>vi. Infused solids;</li> <li>vii. Infused topical preparations;</li> <li>viii. Other oils, butter or fats.</li> </ul>					
d. Presence of QC samples and recording of daily testing.					
e. Appropriate use of an internal reference standard.					
f. Daily monitoring of the response of the instrument detection system.					
31. Other methods.					
a. Microbiological methods fit for purpose.					
b. Microbial contaminants within limits of those listed in the most recent AHP monograph and otherwise directed by WSLCB.					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.					
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed 0.5% residual solvent by weight or 500 parts per million (PPM) per one gram of solvent based product and are to be tested.					
e. Any other QA/QC methods is proven to be fit for purpose.					
32. Laboratory notebooks.					
a. Legible and in ink (or computerized system).					
b. Signed and dated.					
c. Changes initialed and dated.					
d. Periodically reviewed and signed by a management representative.					
33. Preventive/corrective action.					
a. The laboratory shall have a process in place to document quality affecting preventive/corrective actions through resolution.					
34. Periodic management review.					
a. Laboratory management shall periodically review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.					

**WSR 14-12-039  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-127—Filed May 28, 2014, 4:05 p.m., effective May 31, 2014]

Effective Date of Rule: May 31, 2014.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000I and 220-310-20000J; and amending WAC 220-310-200.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No.

2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Reopens the 2014 spring recreational salmon season in the Columbia River from Bonneville Dam upstream to the Washington/Oregon border for the remainder of the spring season. Harvestable upriver chinook remain available based on the inseason runsize update of 230,000 upriver chinook. The LCR sport fishery is not expected to use all of the fish allocated, so around seven hundred fifty fish from the LCR sport allocation have been shifted to the above Bonneville sport fisheries which allows for the reopening. Sockeye retention is not allowed. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation also continues to allow for the retention of hatchery steelhead and shad

during days and in areas that are open for hatchery chinook. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Confirms Washington state rules with Oregon state rules. Regulation is consistent with compact action of May 13 and May 27, 2014. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 2.

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

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

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

Date Adopted: May 28, 2014.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-310-20000J Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**(1) Columbia River:**

(a) Effective immediately through June 15, 2014:

(i) Open for fishing for salmonids from the Tongue Point/Rocky Point line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2).

(ii) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(iii) Release all sockeye, wild Chinook and wild steelhead.

(iv) Salmon minimum size is 12 inches.

(b) Effective May 31 through June 15, 2014:

(i) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

(ii) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(iii) Release all sockeye, wild Chinook and wild steelhead.

(iv) Salmon minimum size is 12 inches.

**(2) Deep River (Wahkiakum Co.):** Effective immediately through June 15, 2014:

(a) The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention.

(b) When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000I Freshwater exceptions to statewide rules—Columbia River. (14-108)

The following section of the Washington Administrative Code is repealed effective June 16, 2014:

WAC 220-310-20000J Freshwater exceptions to statewide rules—Columbia River.

**WSR 14-12-041**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed May 29, 2014, 7:20 a.m., effective June 1, 2014]

Effective Date of Rule: June 1, 2014.

Purpose: These amendments are already in effect via emergency rule making filed on April 30, 2014, as WSR 14-10-042. Amendments in Title 388 WAC remove medical references, support the creation of the housing and essential needs (HEN) referral program and remove references to the Alcohol and Drug Addiction Treatment and Support Act (ADATSA). This emergency filing supersedes WSR 14-10-042 as the emergency filing no longer needs to include WAC 388-406-0055 which was originally included in WSR 14-10-042. WAC 388-406-0055 is being amended via permanent adoption effective June 1, 2014, via WSR 14-10-046 and therefore no longer needs to be included in this emergency filing.

2E2SHB 1738, Laws of 2011, designated the health care authority (HCA) as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. HCA recodified medical assistance program rules to Title 182 WAC. Accordingly, the department must eliminate corresponding rules and medical references under Title 388 WAC. Amendments also support the creation of the new HEN referral program created under SHB 2069 (2013 legislative session) and also remove references related to ADATSA. The legislature did not appropriate funds for ADATSA in the new biennium budget. ADATSA-related medical care services recipients are medicaid eligible under the Affordable Care Act starting January 1, 2014. Additional amendments spell out the acronym, ABD, identifying it as the aged, blind or disabled program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0005, 388-406-0035, 388-406-0045, 388-418-0005, 388-424-0010, 388-424-0015, 388-436-0030, 388-450-0015, 388-450-0025, 388-450-0040, 388-450-0156, 388-450-0162, 388-450-0170, 388-472-0005, and 388-473-0010.

Statutory Authority for Adoption: RCW 74.04.005, [74.04.]050, [74.04.]055, [74.04.]057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011; SHB 2069; and RCW 41.05.021, 74.04.050, 74.08.-090, 74.09.035, 74.09.530, and the 2013 biennial budget.

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

Reasons for this Finding: Amendments remove medical references. More specifically, 2E2SHB 1738, Laws of 2011, designated HCA as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. DSHS worked with HCA to repeal medical assistance program rules under Title 388 WAC in support of HCA's efforts to recodify medical assistance program rules under Title 182 WAC. HCA recodified medical assistance program rules at Title 182 WAC, effective October 1,

2013. Accordingly, the department must eliminate corresponding rules under Title 388 WAC. Amendments remove references to the ADATSA program. The legislature did not appropriate funds for ADATSA in the new biennium budget. ADATSA-related medical care services recipient[s] will be medicaid eligible under the Affordable Care Act starting January 1, 2014. Amendments support the creation of the new HEN referral program created under SHB 2069, which was signed by the governor on June 30, 2013.

The department is in the process of proposing amendments to these rules permanently via the regular rule-making process. WAC 388-406-0055 is being amended via permanent adoption, effective June 1, 2014, via WSR 14-10-046. The department is currently working on proposing amendments to the other WACs and is in the process of preparing and filing a CR-102.

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 15, 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 15, Repealed 0.

Date Adopted: May 27, 2014.

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 14-13 issue of the Register.

**WSR 14-12-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-131—Filed May 29, 2014, 3:55 p.m., effective May 29, 2014, 3:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.04.012, 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: Restrictions in Areas 3 and 4 are implemented to keep impacts within pre-season planning limits for Puget Sound chinook. A harvestable quota of salmon is available for the troll fleet. Restrictions in Areas 1 and 2 are implemented to not exceed the spring quota. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with pre-season fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 29, 2014.

Joe Stohr  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-24-04000E 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 below:

(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:

May 30 through June 3, 2014,  
June 6 through June 10, 2014,  
June 13 through June 17, 2014,  
June 20 through June 24, 2014,  
June 27 through June 30, 2014.

(2) Landing and possession limit of 50 Chinook per boat per each entire open period for the entire Catch Areas 1 and 2.

(3) Landing and possession limit of 40 Chinook per boat per each entire open period for the entire Catch Areas 3 and 4.

(4) It is unlawful for any boat to land or possess more than 50 Chinook during any open period.

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

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

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

(8) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. 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](mailto:Douglas.Milward@dfw.wa.gov) with Area fished, total Chinook and halibut catch aboard, 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](mailto:Douglas.Milward@dfw.wa.gov) with Area fished, total Chinook and halibut catch aboard, and destination. 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.

(9) 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.

(10) Columbia Control Zone is define 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°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

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

(12) 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.

(13) 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 informa-

tion 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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000D All-citizen commercial salmon troll.  
(14-122)

**WSR 14-12-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-130—Filed May 30, 2014, 9:21 a.m., effective June 1, 2014]

Effective Date of Rule: June 1, 2014.

Purpose: Amend rules in the recreational spot shrimp fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp. In addition, harvestable amounts of spot shrimp remain available [in] Marine Areas 4, 5 and 6. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 30, 2014.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-56-32500M Shrimp—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-325, effective June 1, 2014, until further notice:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5 and 6 (excluding the Discovery Bay Shrimp District) are open to the harvest of all shrimp species.

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

a. 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: Open to the harvest of all shrimp species.

b. The portion of Marine Area 7 north of a line from the 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.

(3) 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.

**WSR 14-12-055**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed May 30, 2014, 9:27 a.m., effective May 30, 2014, 9:27 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is changing how it pays federal qualified health center and rural health clinic enhancements through managed care in order to implement section 213(45) from the 2013-2015 biennial operating budget, 3ESSB 5034.

Citation of Existing Rules Affected by this Order: Amending WAC 182-548-1100, 182-548-1400, 182-549-1100, and 182-549-1400.

Statutory Authority for Adoption: RCW 41.05.021.

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 health care authority is amending WAC 182-548-1400 and 182-549-1400 in order to implement section 213(45) from the 2013-2015 biennial operating budget, 3ESSB 5034.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: May 30, 2014.

Kevin M. Sullivan  
 Rules Coordinator

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

**WAC 182-548-1100 Federally qualified health centers—Definitions.** This section contains definitions of words or phrases that apply to this chapter. Unless defined in this chapter or WAC 388-500-0005, the definitions found in the Webster's New World Dictionary apply.

**APM index** - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified

health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI) and Washington-specific variable measures.

**Base year** - The year that is used as the benchmark in measuring a center's total reasonable costs for establishing base encounter rates.

**Cost report** - A statement of costs and provider utilization that occurred during the time period covered by the cost report. FQHCs must complete a cost report when there is a change in scope, rebasing of the encounter rate, or when the department sets a base rate.

**Encounter** - A face-to-face visit between a client and a FQHC provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

**Encounter rate** - A cost-based, facility-specific rate for covered FQHC services, paid to an FQHC for each valid encounter it bills.

~~(Enhancements (also called managed care enhancements) - A monthly amount paid by the department to FQHCs for each client enrolled with a managed care organization (MCO). MCOs may contract with FQHCs to provide services under managed care programs. FQHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.)~~

**Federally qualified health center (FQHC)** - An entity that has entered into an agreement with the Centers for Medicare and Medicaid Services (CMS) to meet medicare program requirements under 42 C.F.R. 405.2434 and:

(1) Is receiving a grant under section 329, 330, or 340 of the Public Health Service (PHS) Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the Public Health Service Act;

(2) Based on the recommendation of the PHS, is determined by CMS to meet the requirements for receiving such a grant;

(3) Was treated by CMS, for purposes of part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990; or

(4) Is an outpatient health program or facility operated by a tribe or tribal organizations under the Indian Self-Determination Act or by an Urban Indian organization receiving funding under Title V of the Indian Health Care Improvement Act.

**Fee-for-service** - A payment method the department uses to pay providers for covered medical services provided to medical assistance clients, except those services provided under the department's prepaid managed care organizations or those services that qualify for an encounter rate.

**Interim rate** - The rate established by the department to pay an FQHC for covered FQHC services prior to the establishment of a permanent rate for that facility.

**Medical assistance** - The various health care programs administered by the department that provide federal and/or state-funded health care benefits to eligible clients.

**Rebasing** - The process of recalculating encounter rates using actual cost report data.



AMENDATORY SECTION (Amending WSR 12-16-060, filed 7/30/12, effective 8/30/12)

**WAC 182-548-1400 Federally qualified health centers—Reimbursement and limitations.** (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the agency's payment methodology for federally qualified health centers (FQHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, FQHCs have the choice to be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates FQHC PPS encounter rates as follows:

(a) Until an FQHC's first audited medicaid cost report is available, the agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI for primary care services, and adjusted for any increase or decrease in the FQHC's scope of services.

(5) The agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the FQHC base encounter rates, as described in subsection (4)(b) of this section.

(b) Base rates are adjusted to reflect any approved changes in scope of service in calendar years 2002 through 2009.

(c) The adjusted base rates are then increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(b) Upon availability of the FQHC's first audited medicaid cost report, the agency sets FQHC encounter rates at one hundred percent of its total reasonable costs as defined in the cost report. FQHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For FQHCs in existence during calendar years 1999 and 2000, the agency sets encounter rates prospectively using a weighted average of one hundred percent of the FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-548-1500.

(b) PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and will be increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11,

2012, the agency will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the FQHC cost reports and other relevant data. Rebas-ing will be done only for FQHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The agency limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(10) Payments for non-FQHC services provided in an FQHC are made on a fee-for-service basis using the agency's published fee schedules. Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(11) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

~~(12) For clients enrolled with an MCO, the agency ((pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).~~

~~(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.~~

~~(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments. For each FQHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the FQHC has been overpaid, the agency will recoup the appropriate amount. If the FQHC has been underpaid, the agency will pay the difference.)) must:~~

~~(a) Notify the MCO of each FQHC's encounter rate and any change to that rate; and~~

~~(b) Insure that the servicing FQHC receives its full encounter rate for qualified encounters.~~

~~(13) If the FQHC did not receive its encounter rate from the MCO, the agency must notify the MCO of the difference between the FQHC's encounter rate and the amount the MCO paid the FQHC and provide for payment sufficient to satisfy 42 U.S.C. 1396a (bb)(5)(A).~~

(14) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter ~~((or enhance-ment))~~ payments. The agency does not pay the encounter rate ~~((or the enhancement rate))~~ for clients in state-only medical programs. Services provided to clients in state-only medical

programs are considered fee-for-service regardless of the type of service performed.

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

**WAC 182-549-1100 Rural health clinics—Definitions.** This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or WAC 388-500-0005, the definitions found in the Webster's New World Dictionary apply.

**"APM index"** - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers.

**"Base year"** - The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

**"Encounter"** - A face-to-face visit between a client and a qualified rural health clinic (RHC) provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

**"Encounter rate"** - A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

~~(**"Enhancements"** (also called managed care enhance-ments) - A monthly amount paid to RHCs for each client enrolled with a managed care organization (MCO). MCOs may contract with RHCs to provide services under managed care programs. RHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.))~~

**"Fee-for-service"** - A payment method the department uses to pay providers for covered medical services provided to medical assistance clients, except those services provided under the department's prepaid managed care organizations or those services that qualify for an encounter payment.

**"Interim rate"** - The rate established by the department to pay a rural health clinic for covered RHC services prior to the establishment of a permanent rate for that facility.

**"Medical assistance"** - The various health care programs administered by the department that provide federal and/or state-funded benefits to eligible clients.

**"Medicare cost report"** - The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

**"Mobile unit"** - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

**"Permanent unit"** - The objects, equipment and supplies necessary for the provision of the services furnished directly by the clinic are housed in a permanent structure.

**"Rebasing"** - The process of recalculating encounter rates using actual cost report data.

**"Rural area"** - An area that is not delineated as an urbanized area by the Bureau of the Consensus.

**"Rural health clinic (RHC)"** - A clinic, as defined in 42 C.F.R. 405.2401(b), that is primarily engaged in providing RHC services and is:

- Located in a rural area designated as a shortage area as defined under 42 C.F.R. 491.2;
- Certified by medicare as a RHC in accordance with applicable federal requirements; and
- Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

**"Rural health clinic (RHC) services"** - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 C.F.R. part 491.9.

AMENDATORY SECTION (Amending WSR 12-16-060, filed 7/30/12, effective 8/30/12)

**WAC 182-549-1400 Rural health clinics—Reimbursement and limitations.** (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency calculates RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates are increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result is the year 2009 APM rates for each RHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an RHC's first audited medicare cost report is available, the agency pays an average encounter rate of other similar RHCs (whether the RHC is classified as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(b) Upon availability of the RHC's first audited medicare cost report, the agency sets RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the RHC has provided during the time period covered in the audited cost report. RHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively using a weighted average of one hundred percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

(3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage

increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates will be increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the RHC cost reports and other relevant data. Rebasing will be done only for RHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(9) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(10) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(11) For clients enrolled with ~~((a managed care organization (MCO), covered RHC services are paid for by that plan.~~

~~(12) For clients enrolled with an MCO, the agency pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).~~

~~(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.~~

~~(b) To ensure that the appropriate amounts are paid to each RHC, the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the RHC has been overpaid, the agency will recoup the appropriate amount. If the RHC has been underpaid, the agency will pay the difference.)) an MCO, the agency must:~~

~~(a) Notify the MCO of each RHC's encounter rate and any change to that rate; and~~

~~(b) Insure that the servicing RHC receives its full encounter rate for qualified encounters.~~

~~(12) If the RHC did not receive its encounter rate from the MCO, the agency must notify the MCO of the difference between the RHC's encounter rate and the amount the MCO paid the RHC and provide for payment sufficient to satisfy 42 U.S.C. 1396a (bb)(5)(A).~~

(13) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter ~~((or enhance-ment))~~ payments. The agency does not pay the encounter rate ~~((or the enhancement rate))~~ for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

### WSR 14-12-061

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 14-132—Filed May 30, 2014, 2:17 p.m., effective June 1, 2014]

Effective Date of Rule: June 1, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500M; amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Reopens the recreational chinook fishery in four geographic areas of the Snake River on a days-per-week basis with an increased daily bag limit for adult hatchery chinook. Based on the current (May 27) in-season forecast of 230,000 adult upriver spring chinook, harvestable fish remain available on the overall recreational catch balance guideline. The Lower Columbia River (LCR) sport fishery is not expected to use all of the fish allocated, so 1,250 fish from the LCR sport allocation have been shifted to sport fisheries occurring from Bonneville Dam upstream to the Washington state line and in the Snake River. A range of 500-850 additional fish are expected to be available for the Snake River sport fishery. The fishery is expected to remain within Endangered Species Act limits allocated to this area. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 30, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500M Freshwater exceptions to statewide rules—Snake River.** Notwithstanding the provisions of WAC 220-310-195, effective June 1 through June 30, 2014:

(1) Open Sunday through Tuesday each week for fishing for hatchery Chinook from the South Bound Highway 12 Bridge at Pasco upstream about 7 miles to the fishing restriction boundary below Ice Harbor Dam.

(2) Open Thursday through Saturday each week for fishing for hatchery Chinook from Texas Rapids boat launch (south side of the river approximately 3.5 miles upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam, including the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility).

(3) Open Sunday through Tuesday each week for fishing for hatchery Chinook from the south shore boat launch (Iliia boat launch) across to the mouth of Almota Creek upstream about four miles to the restricted fishing area below Lower Granite Dam

(4) Open Thursday through Saturday each week for fishing for hatchery Chinook from the downstream edge of the large power lines crossing the Snake River (just upstream from the West Evans Road on the south shore) upstream about 3.5 miles to the Washington state line (from the east levee of the Greenbelt boat launch in Clarkston northwest across the Snake River to the WA/ID boundary waters marker on the Whitman County shore).

**(5) For all subsections listed above the following applies:**

(a) Daily limit is 6 hatchery Chinook and no more than 2 may be an adults. Immediately release all wild (non-adipose fin clipped) Chinook and all steelhead with care. Chinook minimum size is 12 inches.

(b) Anglers must cease fishing for Chinook when the adult daily limit has been retained.

(c) Barbless hooks only when fishing for all species during times and in locations open for salmon fishing and retention.

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

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

**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 July 1, 2014:

WAC 220-310-19500M Freshwater exceptions to statewide rules—Snake River.

#### **WSR 14-12-062**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 14-128—Filed May 30, 2014, 2:54 p.m., effective June 16, 2014]

Effective Date of Rule: June 16, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000K; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: May 30, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 220-310-20000K Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, effective June 16 through June 30, 2014:

(1) It is permissible to fish for salmon in waters of the Columbia River from the Highway 395 Bridge at Pasco to Priest Rapids Dam.

(2) Daily limit of eight (8) salmon, of which no more than two (2) may be adult hatchery chinook and no more than four (4) may be sockeye.

(3) Release wild adult chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2014:

WAC 220-310-20000K Exceptions to statewide rules—  
Columbia River.

**WSR 14-12-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-129—Filed May 30, 2014, 3:10 p.m., effective May 30, 2014,  
3:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Designation of Columbia River seine fishery as an emerging commercial fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-88-050, 220-88-060, 220-88-070, and 220-88-080.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 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: This rule establishes an emerging commercial fishery with limited participants using beach or purse seine gear in the Columbia River. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3620 which includes guiding principles and a progressive series of actions to improve the management of salmon in the Columbia River basin. The fisheries outlined here are part of a series of actions meant to be progressively implemented in 2013-2016 during the transitional period of the policy. This is the first set of commercial regulations allowing seine gear in the Columbia River in decades, and is meant to inform fishery managers in how best to implement such fisheries. 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 4, Amended 0, Repealed 0.

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

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

Date Adopted: May 30, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-88-05000A Designation of Columbia River seine fishery as an emerging commercial fishery.** (1) The director designates the Columbia River seine salmon fishery as an emerging commercial fishery for which use of a vessel is required. The director has determined a need to limit the number of participants in this fishery.

(2) It is unlawful to fish for, possess, or deliver salmon taken for commercial purposes using beach or purse seine unless the fisher possesses a valid emerging commercial fishery license and a salmon experimental fishery permit for either beach seine or purse seine gear. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

NEW SECTION

**WAC 220-88-06000A Columbia River seine emerging commercial fishery—Qualifications—Issuance of experimental fishery permits—License fee—Permit conditions.** (1) Individuals interested in participating in this fishery must apply for an emerging fishery license. Only one application per person. Application deadline is June 20, 2014.

(a) Experimental fishery permits will be drawn randomly from the pool of emerging fishery license applications for Columbia River seine fisheries received by the deadline. Applications will be pooled by gear type (i.e. beach seine pool and purse seine pool). Permits will be based on the ranking order of the preferred Zones (fishing area) provided by the applicant.

(b) Random drawings will begin after June 20, 2014. Drawings will continue until the number of permits needed is filled for each gear type and zone as determined by the agencies.

(c) Once drawn, the emerging fishery license and experimental fishery permit will be awarded so long as the applicant meets the qualifications for the license and permit as provided in subsection (2) of this section. Random drawings will continue from this pool of applicants until all permits are filled or the pool of qualified applicants is exhausted. Award

notifications for applicants who meet the June 20 deadline will occur no later than July 15, 2014.

(d) The department may perform additional random drawings if the total number of permits needed is not filled from the applications received by the June 20 deadline.

(e) Alternate permits for each gear type and area may be drawn. Alternate permits for each gear type may be awarded if needed at the Department's discretion.

(f) Applicants drawn for an emerging fishery license and experimental fishery permit must respond within ten (10) business days of being notified by the department to accept the permit and purchase the emerging fishery license. At that time the emerging fishery license fee will be due, and the license and permit will be issued by WDFW upon receipt of payment. The department will not issue the emerging fishery license or the experimental fishery permit until payment is received. If an applicant is drawn for the license and permit and fails to purchase the license and permit within ten (10) business days of notification of selection, the department may issue the license and permit to another selected applicant.

(g) The emerging fishery license and experimental fishery permit expire on December 31, 2014.

(2) Qualifications: An experimental fishery permit will only be issued to a natural person who has a valid emerging commercial fishery license and who:

(a) Possesses a commercial gillnet salmon license/permit issued by Washington or Oregon for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Harbor and can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas within the past two calendar years (2012 and 2013) under that license; or

(b) Can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas by the applicant under a commercial salmon license issued for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Harbor within the past two calendar years (2012 and 2013).

(3) Nothing in this section gives preference to 2014 permit holders for issuance of potential future permits.

(4) Experimental fishery permits are not transferable between persons. The permit holder must be present and in possession of a valid experimental fishery permit during seine fishing operations. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(5) It is unlawful to violate the conditions of the experimental fishery permit for the Columbia River seine emerging commercial fishery. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(6) Experimental fishery permits may be revoked at the discretion of the Director and future permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.

**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.

#### NEW SECTION

**WAC 220-88-07000A Columbia River seine emerging commercial fishery—Season, area, and gear requirements.** It is unlawful to fish for salmon for commercial purposes with beach or purse seine gear except as provided in this section:

(1) Season: Open with state regulatory processes for commercial fishing with these gear types (beach or purse seine). Fishing periods are expected in 2014 during the months of August, September, and October. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(2) Open area: Columbia River from the Columbia River mouth upstream to Beacon Rock, as described in WAC 220-22-010 salmon management and catch reporting areas 1A-1E and as determined by the Columbia River Compact. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) Gear type: Beach seines or purse seines only. Only one net per boat.

(a) Purse seine gear requirements:

(i) Net length: 200 fathoms maximum, including associated lead nets.

(ii) Net depth: 200 meshes deep (approximately 50 feet).

(iii) Mesh size/type: 3.5-inch maximum mesh. 3-strand nylon. Twine  $\geq$  #12.

(iv) Bunt: No less than six fathoms of knotless bunt (1.5-inch maximum).

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

(vi) Block or drum gear is permissible.

(b) Beach seine gear requirements:

(i) Net length: 200 fathoms maximum, including associated lead nets.

(ii) Net depth: 200 meshes deep (approximately 50 feet).

(iii) Mesh size/type: 3.5-inch maximum mesh. 3-strand nylon. Twine  $\geq$  #12.

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

(4) A violation of subsection (3) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

#### NEW SECTION

**WAC 220-88-08000A Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements.** (1) Allowable possession and sales: Salmon. All species other than salmon must be carefully handled and returned to the water promptly.

(2) Handling of catch: Catch may only be handled by hand or with rubber coated nets when sorting fish. Fish must be sorted while submerged in the water; it is unlawful to dry sort fish on land.

**WSR 14-12-068****EMERGENCY RULES****TRANSPORTATION IMPROVEMENT BOARD**

[Filed June 2, 2014, 1:46 p.m., effective June 2, 2014, 1:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To waive the match requirement set forth in WAC 479-14-261 for the town of Darrington.

Statutory Authority for Adoption: RCW 47.26.115.

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 March 22, 2014, Oso mudslide impacted a large area, including the town of Darrington. Immediate action is needed to assist with the town's safety, general welfare, and financial hardship in the recovery of the mudslide efforts. Proclamation 14-02 directs state agencies to do everything reasonably possible to assist affected areas in an effort to respond to and recover from the event.

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

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

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

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

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

Date Adopted: May 30, 2014.

Stevan Gorcester  
Executive Director

**NEW SECTION**

**WAC 479-14-262 Matching requirement waiver for town of Darrington Fir Street project.** Pursuant to Proclamation 14-02, issued March 22, 2014, regarding the catastrophic landslide between Oso and Darrington in Snohomish County, the match requirement set forth in WAC 479-14-261 is waived for the town of Darrington's Fir Street project from Sauk Avenue to Elwell Avenue.

**WSR 14-12-072****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 14-133—Filed June 2, 2014, 4:57 p.m., effective June 3, 2014, 6:00 a.m.]

Effective Date of Rule: June 3, 2014, 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 220-32-05100B; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 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 third treaty commercial gillnet season for salmon. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6. Sales of fish landed in the area downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area is lawfully open for sales under tribal regulations. Similarly, the sale[s] of fish caught in Yakama Nation tributary fisheries are allowed when open under Yakama Nation regulations. The quick-reporting rule has been modified to require reports to be made within twenty-four hours of completing the fish ticket. The intent would be that all landings in Areas 1F, 1G and 1H are quick reported within twenty-four hours of completion. Because treaty fisheries can be two - three days long, the modification will allow harvest to be tracked as the fishing period progresses. Harvestable upriver spring chinook fish are available to the treaty tribes based on the current in-season run-size estimate. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5 and June 2, 2014. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

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 rules 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[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: June 2, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

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

walleye, bass, or yellow perch under the following provisions:

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

(a) Season: 6:00 a.m. June 3 to 6:00 p.m. June 6, 2014.

(b) Gear: Gillnets only.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

(d) All sanctuaries for this gear type in effect, except Spring Creek.

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

(a) Season: Immediately until further notice.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

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

(d) All dam sanctuaries for these gear types are in effect.

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

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

(b) Season: Immediately until further notice. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(4) Columbia River Tributaries upstream of Bonneville Dam

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

(b) Area: Drano Lake, Wind River and Klickitat River.

(c) Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas, as provided in WAC 220-69-240, EXCEPT that the 24-hour quick report language has been modified to require all landings from treaty fisheries described above are to be reported within 24-hours of completing the fish ticket (not 24-hrs after the period concludes).

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 3, 2014:

WAC 220-32-05100B Columbia River salmon seasons above Bonneville Dam. (14-125)

**WSR 14-12-092  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-136—Filed June 3, 2014, 4:52 p.m., effective June 4, 2014, 6:00 p.m.]

Effective Date of Rule: June 4, 2014, 6:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000T; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.012, 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: Opens a twelve hour mainstem commercial fishery in Zones 1-5. The upriver spring chinook run-size has been updated to 234,000 fish, which increases the number of fish available for harvest. This rule continues to implement the "adaptive management" clause in Policy C-3620 by allowing the use of eight inch gear. With the increasing abundance of shad in the river the intercept rate of shad with tanglenet gear is exceedingly high. In an effort to maintain a high level of conservation, the reduced shad interception rate is intended to keep chinook handle time at a minimum. Upriver spring chinook mortalities are expected to remain within the ESA and catch balance limits allowed. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. This rule is consistent with compact action of January 29 and June 3, 2014. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt rules reflecting agreements reached.

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

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

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

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

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

Date Adopted: June 3, 2014.

Philip Anderson  
Director

## NEW SECTION

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

**(1) Mainstem Columbia River**

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

(b) **Dates:** 6:00 p.m. June 4 to 6:00 a.m. June 5, 2014.

(c) **Allowable Possession:** Adipose fin-clipped Chinook, sockeye and shad.

(d) **Sanctuaries:** Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers

(e) **Gear:** Drift nets only. 8-inch minimum mesh: Net length not to exceed 150 fathoms.

**(f) Miscellaneous:**

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

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

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

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

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

All sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box. Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

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

**(2) Deep River Select Area**

(a) **Dates:** Monday and Thursday nights immediately through June 13, 2014. Open hours are 7 PM to 7 AM.

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

(c) **Gear:** Gillnets only. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. It is permissible to use additional weights or anchors attached directly to the leadline.

Nets cannot be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules of the department (WAC 220-20-010(17)).

(d) **Allowable Possession:** Salmon and shad.

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

**(3) Tongue Point/South Channel**

(a) **Dates:** Monday and Thursday nights immediately through June 13, 2014. Open hours are 7:00 PM to 7:00 AM,

(b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a

marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

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

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

(d) **Allowable Possession:** Salmon and shad.

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

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

**(4) Blind Slough/Knappa Slough Select Area**

(a) **Dates:** Monday and Thursday nights immediately through June 13, 2014. Open hours are 7:00 PM to 7:00 AM.

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

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

(d) **Allowable Possession:** Salmon and shad.

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

**(5) For all fisheries described above (Sections 1-4):**

(a) **24-hour** quick reporting is required for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules apply.

(b) **Multi net rule in effect:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

(c) **Lighted buoys required:** Nets fished at times between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

**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.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. June 4, 2014:

WAC 220-33-01000T Columbia River seasons below Bonneville. (14-126)

**WSR 14-12-096**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 14-135—Filed June 4, 2014, 10:38 a.m., effective June 4, 2014, 10:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000F; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 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: Closes the John Day Pool to sturgeon retention. Catch and release is allowed during non-retention periods. Regulation is consistent with joint state (Washington-Oregon) action of March 27 and June 3, 2014. Conforms Washington state rules with Oregon state rules. 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: June 4, 2014.

Philip Anderson  
Director

NEW SECTION

**WAC 220-310-20000L Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 220-310-200:

(1) Effective immediately until further notice, except for the specific dates and area described in subsection (3) of this section, it is unlawful to retain sturgeon caught in those waters of the Columbia River and in all adjacent Washington tributaries from Bonneville Dam upstream to The Dalles Dam.

(2) Effective immediately through July 31, 2014: Sturgeon spawning sanctuary in effect: Angling for sturgeon is prohibited from The Dalles Dam downstream 1.8 miles to a line from the east (upstream) dock at the Port of The Dalles boat ramp straight across to a marker on the Washington shore.

(3) Effective June 13 through June 14 and June 20 through June 21, 2014, it is permissible to retain white sturgeon between 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and in all adjacent Washington tributaries from Bonneville Dam upstream to the sturgeon spawning Sanctuary boundary located 1.8 miles downstream of The Dalles Dam and described in subsection (2) of this section.

(4) Effective June 14, 2014 until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and in all adjacent Washington tributaries from John Day Dam upstream to McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000F Exceptions to statewide rules—  
Columbia River sturgeon. (14-73)