

**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

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-406-0005 Can I apply for cash(~~(or medical)~~) or Basic Food?** (1) You can apply for any benefit the department offers, including cash assistance(~~(or medical assistance)~~) or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child; or

(ii) An incapacitated person(~~(or~~

~~iii) Someone who is deceased~~)).

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) (~~If you get supplemental security income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.~~

~~(5))~~) A person or agency may apply for aged, blind, or disabled (ABD) cash (~~(or medical assistance)~~) for you if:

(a) You temporarily live out-of-state; and

(b) You are a Washington state resident.

~~((6))~~ (5) When you are confined or incarcerated in a Washington state public institution, you may apply for cash ~~((or medical assistance))~~ if you meet the following criteria:

(a) You are confined by or in the following public institutions:

- (i) Department of corrections;
- (ii) City or county jail; or
- (iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

~~((7)) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:~~

~~(a) Meet the criteria of subsection (6) in this section; and  
(b) Were receiving medicaid immediately before confinement or within the five years prior to confinement.~~

~~(8) If you meet the criteria in subsection (6) but did not receive medicaid within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.~~

~~(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty five days prior to release. We will process your application for medical assistance when we receive it, and if eligible, we will authorize medical benefits upon the youth's release from confinement.)~~

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

**WAC 388-406-0035 How long does the department have to process my application?** (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

~~(a) ((If you are pregnant, we must process your application for medical within fifteen working days;~~

~~(b)) If you are applying for aged, blind, or disabled (ABD) cash assistance, ((alcohol or drug addiction treatment (ADATSA), or medical assistance)) or a referral to the housing and essential needs (HEN) program, we must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045(~~and~~~~

~~(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days)).~~

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for supplemental security income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-406-0045 Is there a good reason my application for cash ~~((or medical))~~ assistance has not been processed?** If your application for cash ~~((or medical))~~ assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

(i) Medical documentation;

(ii) For cash assistance, extensive property appraisals; or

(iii) Out-of-state documents or correspondence.

~~(3) ((For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.~~

~~(4)) For aged, blind, or disabled (ABD) cash assistance, or a referral to the housing and essential needs (HEN) program, good cause exists if you apply when you are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a).~~

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

**WAC 388-418-0005 How will I know what changes to report?** (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your

benefits. Follow the steps below to determine the types of changes you must report:

~~((H)) (a) If you receive ((assistance from any of the programs listed in subsection (1)), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the first program you receive benefits from.~~

~~(a) If you receive **long term care** benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPEs, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:~~

- ~~(i) Residence;~~
- ~~(ii) Marital status;~~
- ~~(iii) Living arrangement;~~
- ~~(iv) Income;~~
- ~~(v) Resources;~~
- ~~(vi) Medical expenses; and~~

~~(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.~~

~~(b) If you receive medical benefits based on age, blindness, disability (SSI-related medical), or ADATSA benefits, you need to tell us if:))~~

- ~~((i) You move;~~
- ~~(ii) A family member moves into or out of your home;~~
- ~~(iii) Your resources change; or~~
- ~~(iv) Your income changes. This includes the income of you, your spouse or your child living with you.~~

~~(e) If you receive)) cash benefits, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) Someone moves out of your home;~~
- ~~(iii) Your total gross monthly income goes over the:~~

~~(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or~~

~~(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;~~

~~(iv) You have liquid resources more than four thousand dollars; or~~

~~(v) You have a change in employment. Tell us if you:~~

- ~~(A) Get a job or change employers;~~
- ~~(B) Change from part-time to full-time or full-time to part-time;~~

~~(C) Have a change in your hourly wage rate or salary; or~~

~~(D) Stop working((; or~~

~~(E) See WAC 182-504-0100 for medical care services reporting requirements)).~~

~~((H)) (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) The child you are caring for moves out of the home;~~
- ~~(iii) Anyone related to you or to the child you are caring for moves into or out of the home;~~

~~(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).~~

~~(v) There is a change in the recipient child's earned or unearned income (see WAC 388-450-0070 for how we count the earned income of a child);~~

~~(vi) The recipient child has liquid resources more than four thousand dollars;~~

~~(vii) A recipient child in the home becomes a foster child; or~~

~~(viii) You legally adopt the recipient child.~~

~~((e) If you receive **family medical** benefits, you need to tell us if:~~

~~(i) You move;~~

~~(ii) A family member moves out of your home; or~~

~~(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.))~~

~~(2) If you do not receive cash assistance ((from any of the programs listed in subsection (1))), but you do receive Basic Food benefits ((from any of the programs listed in subsection (2))), you must report changes for the people in your assistance unit under chapter 388-408 WAC((, based on all the benefits you receive.~~

~~(a) If you receive **Basic Food** benefits, you)). You need to tell us if:~~

~~((i) If you)) (a) Your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or~~

~~((ii)) (b) For all other households tell us if your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or~~

~~((iii)) (c) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.~~

~~((b) If you receive **children's medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the house.~~

~~(e) If you receive **pregnancy medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) You are no longer pregnant.~~

~~(d) If you receive **other medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the home.))~~

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

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-424-0010 Citizenship and alien status—Eligibility for TANF((, ~~medicaid, and CHIP~~)).** (1) To receive temporary assistance for needy families (TANF)((, ~~medicaid, or children's health insurance program (CHIP) benefits~~)), an individual must meet all other eligibility

requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien";
- (e) A victim of trafficking; or
- (f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF(~~(, Medicaid, and CHIP)~~).

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF(~~(, Medicaid, or CHIP)~~) for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006(4) are met.

~~(4) ((A lawfully present "nonqualified alien" child or pregnant woman as defined in WAC 388-424-0001 who meet residency requirements as defined in WAC 388-468-0005 may receive Medicaid or CHIP.~~

~~(5))~~ An alien who is ineligible for TANF(~~(, Medicaid or CHIP)~~) because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) (~~and WAC 388-438-0110 (alien medical program)~~); or

(b) State-funded cash (~~(or chemical dependency benefits)~~) as described in WAC 388-424-0015 (state family assistance (SFA), and aged, blind, or disabled (ABD) cash(~~(, and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)~~), and medical benefits as described in WAC 182-503-0532; or

(c) Pregnancy medical benefits for noncitizen women as described in WAC 388-462-0015(3); or

~~(d) State funded apple health for kids as described in WAC 388-505-0210(5)).~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash(~~(, )~~) and PWA(~~(, and ADATSA)~~) programs.** (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); or

(b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001.

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or

(e) A nonqualified alien described in WAC 388-424-0001 who:

- (i) Has verified their intent to stay in the United States indefinitely; and
- (ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-436-0030 How does my eligibility for other possible cash benefits impact my eligibility for CEAP?** (1) You are ineligible for CEAP if you, or a household member, are eligible for any of the following programs:

(a) TANF or SFA, unless the family has had its case grant terminated due to WAC 388-310-1600;

(b) Pregnant women assistance (PWA);

(c) RCA;

(d) Aged, blind, or disabled (ABD) cash;

(e) Supplemental security income (SSI);

~~((f) Medical assistance for those applicants requesting help for a medical need;~~

~~((g))~~ (f) Food assistance for those applicants requesting help for a food need;

~~((h))~~ (g) Housing assistance from any available source for those applicants requesting help for a housing need;

~~((i))~~ (h) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.

(2) The department may require the applicant, or anyone in the assistance unit, to apply for and take any required action to receive benefits from programs described in the above subsection (1)(a) through (h).

(3) The department may not authorize CEAP benefits to any household containing a member who is:

(a) Receiving cash benefits from any of the following programs:

(i) TANF/SFA;

(ii) PWA;

(iii) RCA;

(iv) DCA; or

(v) ABD cash.

(b) Receiving reduced cash benefits for failure to comply with program requirements of TANF/SFA, or RCA.

(4) The department may authorize CEAP to families reapplying for TANF/SFA who are not eligible for TANF cash benefits under WAC 388-310-1600 until they complete the four week participation requirement.

AMENDATORY SECTION (Amending WSR 12-08-002, filed 3/21/12, effective 4/21/12)

**WAC 388-450-0015 What types of income are not used by the department to figure out my benefits?** This section applies to cash assistance(~~(, children's, family, or pregnancy medical,))~~) and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and SSI;

(k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(m) Payments we are directly told to exclude as income under state or federal law.

(n) ~~((For cash and Basic Food))~~ Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

~~((p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.~~

~~(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.)~~

**AMENDATORY SECTION** (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

**WAC 388-450-0025 What is unearned income?** This section applies to cash assistance((-)) and food assistance((-)

~~and medical programs for families, children, and pregnant women)).~~

(1) Unearned income is income you get from a source other than employment or self-employment. Some examples of unearned income are:

(a) Railroad retirement;

(b) Unemployment compensation;

(c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or

(e) Veteran Administration benefits.

(2) For food assistance we also count the total amount of cash benefits due to you before any reductions caused by your failure (or the failure of someone in your assistance unit) to perform an action required under a federal, state, or local means-tested public assistance program, such as TANF/SFA, ABD assistance, PWA, and SSI.

(3) When we count your unearned income, we count the amount you get before any taxes are taken out.

**AMENDATORY SECTION** (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-450-0040 Native American benefits and payments.** This section applies to TANF/SFA, RCA, PWA, ABD cash, ~~((medical;))~~ and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian ~~((judgement))~~ **judgment** funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determining a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540; and

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503(~~;~~ and

~~(d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations).~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-450-0156 When am I exempt from deeming?** (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with United States Citizenship and Immigration Services (USCIS):

- (i) Refugee;
- (ii) Parolee;
- (iii) Asylee;
- (iv) Cuban/Haitian entrant; or
- (v) Special immigrant from Iraq or Afghanistan.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, ~~((or))~~ nonemergency medicaid benefits, or Washington Apple Health coverage. We count a quarter of work by the following people toward your forty qualifying quarters:

- (i) Yourself;
- (ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
- (iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If USCIS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

(i) You no longer live with your sponsor; and

(ii) Leaving your sponsor caused your need for benefits.

(2) You are exempt from the deeming process while you are in the same AU as your sponsor(~~;~~

~~(3) For children and pregnancy medical programs, you are exempt from sponsor deeming requirements).~~

~~((4))~~ (3) For Basic Food, you are exempt from deeming while you are under age eighteen.

~~((5))~~ (4) For state family assistance, aged, blind, or disabled (ABD) cash, pregnant women assistance (PWA)(~~;~~) and state-funded Basic Food benefits, ~~((and state-funded medical assistance for legal immigrants))~~ you are exempt from the deeming process if:

(a) Your sponsor signed the affidavit of support more than five years ago;

(b) Your sponsor becomes permanently incapacitated; or

(c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of an honorably discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

~~((6))~~ (5) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

~~((7))~~ (6) If your AU has income at or below one hundred thirty percent of the federal poverty level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption." You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

~~((8))~~ (7) If you use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

(a) The names of the sponsored people in your AU;

(b) That you are exempt from deeming due to your income;

(c) Your sponsor's name; and

(d) The effective date that your twelve-month exemption began.

~~((9))~~ (8) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

~~((10))~~ (9) If you choose not to use the indigence exemption:

(a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or

(b) You will be subject to regular deeming rules under WAC 388-450-0160.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-450-0170 Does the department provide an earned income deduction as an incentive for persons who receive TANF/SFA to work?** This section applies to TANF/SFA, RCA(~~(7)~~) and PWA(~~(7)~~ and medical programs for children, pregnant women, and families except as specified under ~~WAC 388-450-0210~~).

(1) If a client works, the department only counts some of the income to determine eligibility and benefit level.

(2) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

(3) If you pay for care before we approve your benefits, we subtract the amount you pay for those dependent children or incapacitated adults who get cash assistance with you.

(a) The amount we subtract is:

(i) Prorated according to the date you are eligible for benefits;

(ii) Cannot be more than your gross monthly income; and

(iii) Cannot exceed the following for each dependent child or incapacitated adult:

Dependent Care Maximum Deductions

Hours Worked Per Month	Child Two Years of Age & Under	Child Over Two Years of Age or Incapacitated Adult
0 - 40	\$ 50.00	\$ 43.75
41 - 80	\$ 100.00	\$ 87.50
81 - 120	\$ 150.00	\$ 131.25
121 or More	\$ 200.00	\$ 175.00

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

**WAC 388-472-0005 What are my rights and responsibilities?** For the purposes of this chapter, "we" and "us" refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, a referral to the housing and essential needs (HEN) program, or food (~~or medical~~) assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Have us explain the legal use of DSHS benefits to you;

(c) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

(d) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

(e) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two working days from the date we denied your request for expedited services;

~~(ii) (If you are pregnant and otherwise eligible, you get medical within fifteen working days;~~

~~(iii)) Aged, blind, or disabled (ABD) assistance, or ((alcohol or drug addiction treatment (ADATSA), or medical assistance)) referral to the housing and essential needs (HEN) program, may take up to forty-five days(;~~ and

~~(iv) (iii) Medical assistance requiring a disability decision may take up to sixty days)).~~

(f) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

(g) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

(h) Ask us not to collect child support (~~(or)~~) (which includes medical support, as defined in WAC 388-14A-1020) if you fear the noncustodial parent may harm you, your children, or the children in your care;

(i) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shutoff, if you get TANF;

(j) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

(k) Ask for an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(l) Have interpreter or translator services given to you at no cost and without delay;

(m) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

(n) Get help from us to register to vote.

(2) If you get cash(=) or food(=or medical) assistance, you are responsible to:

(a) Tell us if you are ((pregnant, in need of immediate medical care,)) experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

- (i) Shelter costs;
- (ii) Child or dependent care costs;
- (iii) Child support that is legally obligated;
- (iv) Medical expenses; and
- (v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(f) Cooperate in the collection of child support ((or medical support)) unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

(j) ((Give your Provider One services card to your medical care provider;

(k)) Cooperate with the quality control review process;

((k)) (k) Keep track of your EBT card for cash and food assistance and keep your personal identification number (PIN) secure. If you receive multiple replacement EBT cards, this may trigger an investigation to determine if you are trafficking benefits as described under WAC 388-412-0046 (2)(d); and

((m)) (l) Use your cash and food assistance benefits only as allowed under WAC 388-412-0046.

(3) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you comply with the requirements of this section.

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

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-473-0010 What are ongoing additional requirements and how do I qualify?** "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

- (a) Temporary assistance for needy families (TANF), or tribal TANF;
- (b) State family assistance (SFA);
- (c) Pregnant women assistance (PWA);

(d) Refugee cash;

(e) Aged, blind, or disabled (ABD) cash assistance; or

(f) Supplemental security income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your cash ((or medical)) assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

(a) The circumstances that create the need; and

(b) How the need affects your health, safety and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by increasing your monthly cash assistance benefit.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
TANF/RCA	6 Months
ABD	12 Months
SSI	24 Months
All	Any time need or circumstances are expected to change

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

AMENDATORY SECTION

**WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits?** (1) Countable income is all income your assistance unit (AU) or your child-only means-testing AU has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170 and 388-450-0175;

(c) For **Basic Food**, deductions allowed under WAC 388-450-0185; and

(d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.

(a) Child-only means-testing applies when you are a nonparental relative or unrelated caregiver applying for or receiving a nonneedy TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.



(b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.

(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%
Between 201% and 225% of FPL	80%
Between 226% and 250% of FPL	60%
Between 251% and 275% of FPL	40%
Between 276% and 300% of FPL	20%
Over 300% of the FPL	The children in your care are not eligible for a TANF/SFA grant.

(d) If the children in your care qualify for a TANF/SFA grant once the child-only means-test is applied, the child's income is budgeted against the child-only means-tested payment standard amount.

~~((e) If the children in your care do not qualify for a TANF/SFA grant once the child-only means-test is applied, they may still qualify for medical assistance as described in WAC 388-408-0055 and WAC 388-505-0210.))~~

**(4) For cash assistance:**

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 or, for child-only means-tested cases, to the payment standard amount in subsection (3) of this section.

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

(5) For **Basic Food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for Basic Food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060.

We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

**WSR 14-13-007  
EMERGENCY RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed June 5, 2014, 11:44 a.m., effective June 5, 2014, 11:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To remove the provision that allows members of the Teachers' Retirement System Plan 3 to select a new contribution rate option each year.

Citation of Existing Rules Affected by this Order: Amending WAC 415-111-220.

Statutory Authority for Adoption: RCW 41.50.050(5).

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: This rule change implements SB 6321 passed by the 2014 legislature and is necessary to meet plan qualification requirements in the Internal Revenue Code.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: June 5, 2014.

Marcie Frost  
Director

**AMENDATORY SECTION** (Amending WSR 06-03-097, filed 1/17/06, effective 2/17/06)

**WAC 415-111-220 How do I choose a defined contribution rate?** (1) **Contribution rates:** If you are a member of the Teachers' Retirement System (TRS) Plan 3, the School Employees' Retirement System (SERS) Plan 3, or the Public Employees' Retirement System (PERS) Plan 3, you are required to contribute from your compensation according to one of the following rate structures:

	Base Rate	Additional Rate	Total Contribution Rate
<b>Option A</b>			
All ages	5.0%	0.0%	5.0%
<b>Option B</b>			
Up to age 35	5.0%	0.0%	5.0%
Age 35 to 44	5.0%	1.0%	6.0%
Age 45 and above	5.0%	2.5%	7.5%
<b>Option C</b>			
Up to age 35	5.0%	1.0%	6.0%
Age 35 to 44	5.0%	2.5%	7.5%
Age 45 and above	5.0%	3.5%	8.5%
<b>Option D</b>			
All ages	5.0%	2.0%	7.0%
<b>Option E</b>			
All ages	5.0%	5.0%	10.0%
<b>Option F</b>			
All ages	5.0%	10.0%	15.0%

(2) **How do I make the choice?** Under WAC 415-111-110, it is your responsibility to complete the correct form for choosing a contribution rate and submitting the form in a timely manner to your employer as directed on the form.

(3) **Where do I get the form to make my choice?** Your employer must provide the appropriate form to choose a contribution rate if you are enrolling in Plan 3 or transferring from Plan 2 to Plan 3.

(4) **When do I have to choose?** You must choose a contribution rate within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must choose a contribution rate at the same time you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

**(5) When do contributions begin?**

(a) Once you choose a contribution rate, contributions will begin the first day of the pay cycle in which you make the choice.

(b) If the employer advises the department that you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered that you should have been reported. The department will decide which date to use.

(6) **What if I work for more than one employer?** If you are a Plan 3 member working in eligible positions for more than one employer, you may select a different contribution rate with each employer.

(7) **What happens if I do not make a choice?** Under RCW 41.34.040, you will be assigned a base rate of 5% (Option A) if:

(a) You are a new employee or changing your employer, and do not choose a contribution rate within the ninety-day election period described in subsection (4) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not choose a contribution rate at the time of transfer. Contributions required under subsection (a) or (b) will begin the first day of the pay cycle in which you are assigned to Option A.

**(8) Can I change my contribution rate?**

(a) If you are a PERS 3 or SERS 3 member, once you choose a contribution rate or are assigned the base rate of 5% (Option A), you cannot change that contribution rate unless you change employers. This rule is required by an IRS decision on the tax qualified status of PERS 2 and 3 and SERS 2 and 3.

(b) Each time you change employers, you must choose a new contribution rate within ninety days or you will be assigned a base rate of 5% (Option A). No contributions will be taken until you choose a rate or until the ninety-day period has elapsed, whichever occurs first.

(c) Each January, through January 2015, TRS Plan 3 members may change their contribution rate option by providing written notification to their employer as described in WAC 415-111-110(1). After January 2015, TRS Plan 3 members may only change their contribution rate option as provided in (b) of this subsection. The termination of TRS rate flexibility in January 2015 is required to meet plan qualification requirements in the Internal Revenue Code.

**WSR 14-13-009**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 14-137—Filed June 5, 2014, 1:25 p.m., effective June 5, 2014, 1:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000E; 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 preseason 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 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: June 5, 2014.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-24-04000F 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:

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 40 Chinook per boat per each entire open period for the entire Catch Areas 1 and 2.

(3) Landing and possession limit of 30 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 40 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 information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

**Reviser's note:** The typographical 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 220-24-04000E All-citizen commercial salmon troll.  
(14-131)

**WSR 14-13-010  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-134—Filed June 5, 2014, 1:26 p.m., effective June 6, 2014]

Effective Date of Rule: June 6, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
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: Hatchery-origin spring chinook in excess of desired escapement are forecast to return to the Wenatchee River. The fishery will reduce the number of excess hatchery-origin spring chinook and consequently increase the proportion of natural-origin spring chinook on the spawning grounds. Opening two sections of the Wenatchee River will provide additional fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: June 5, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500N Freshwaters exceptions to statewide rules—Wenatchee River.** Notwithstanding the provisions of WAC 220-310-195, effective June 6, 2014, until further notice:

(1) It is permissible to fish in waters of the Wenatchee River from the Washington State Parks foot bridge at Confluence Park (just upstream from the confluence with the Columbia River) to 400 feet below Dryden Dam.

(2) It is permissible to fish in waters of the Wenatchee River from the confluence with Peshastin Creek and from that point to a line perpendicular with the river to the opposite river bank (approximately 1,000 feet above Dryden Dam), then to the downstream point of the confluence with the Icicle River and from that point to a line perpendicular with the Wenatchee River to the marker on the opposite river bank.

(3) The following restrictions apply to subsections (1) and (2) of this section:

(a) Daily limit two hatchery Chinook. Mandatory retention of adipose fin clipped Chinook applies.

(b) Anglers must release adipose present Chinook unharmed and cannot be removed from the water prior to release.

(c) Anglers must release all Chinook with one or more round 1/4 inch diameter holes punched in the caudal (tail) fin.

(d) Selective gear rules are in effect, except bait is allowed.

(e) Night closure is in effect.

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

**WSR 14-13-011  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-138—Filed June 5, 2014, 1:33 p.m., effective June 7, 2014]

Effective Date of Rule: June 7, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500I; and amending WAC 220-310-185.

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: As of June 2, a total of two hundred twenty-five adult spring chinook have returned to Klickitat Salmon Hatchery. Klickitat Salmon Hatchery is expected to meet its escapement goal of five hundred fish which will allow additional recreational opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 5, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-18500I Freshwater exceptions to statewide rules—Klickitat River.** Notwithstanding the provisions of WAC 220-310-185, effective June 7 through July 31, 2014:

(1) It is permissible to fish in waters of the Klickitat River from 400 feet upstream of the #5 fishway to boundary markers below the Klickitat Salmon Hatchery.

(2) Daily limit 6 salmon, of which no more than 2 may be adults. Release wild Chinook.

#### REPEALER

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

WAC 220-310-18500I Freshwater exceptions to statewide rules—Klickitat River.

**WSR 14-13-019**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-140—Filed June 9, 2014, 1:55 p.m., effective June 10, 2014, 11:59 p.m.]

Effective Date of Rule: June 10, 2014, 11:59 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100P; 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 Areas 1A, 1B and 1C, as the quota will be reached; (2) implements a trip limit of three hundred fifty pounds in Areas 1A, 1B and 1C until those areas close; and (3) implements a trip limit of five hundred pounds in Area 2W. 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 9, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-05100Q 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, 2W, 3, 4, and 6

are open to the harvest of all non-spot shrimp species, except as provided below:

(i) All waters of Shrimp Management Area 2E, 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. June 17, 2014, all waters of Shrimp Management Areas 1A, 1B and 1C are closed.

(b) Effective immediately, until 6:00 p.m. June 17, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 350 pounds per management week from Shrimp Management Areas 1A, 1B and 1C.

(c) 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 500 pounds per management week from Shrimp Management Area 2W.

(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. June 10, 2014:

WAC 220-52-05100P Puget Sound shrimp pot and beam trawl fishery—Season. (14-124)

**WSR 14-13-020  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-139—Filed June 9, 2014, 5:01 p.m., effective June 10, 2014, 6:00 a.m.]

Effective Date of Rule: June 10, 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 220-32-05100C; 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 the fourth weekly treaty commercial gillnet salmon period for the spring season. 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. 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 to 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 9, 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 9, 2014.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-32-05100D 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 10 to 6:00 p.m. June 12, 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 10, 2014:

WAC 220-32-05100C Columbia River salmon seasons above Bonneville Dam. (14-133)

### **WSR 14-13-022**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF REVENUE**

[Filed June 10, 2014, 9:25 a.m., effective June 10, 2014, 9:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-61A-202 (REET Rule 202) explains the exemption from real estate excise tax (REET) for inheritance transfers. WAC 458-61A-303 (REET Rule 303) explains the REET affidavit requirements. 2ESHB 1117, effective on June 12, 2014, provides a new REET exemption for transfers pursuant to a transfer on death deed and substantiation requirements to claim that exemption, as well as a change to the affidavit requirements for transfer on death deed transfers. REET Rules 202 and 303 are amended to reflect this new exemption and accompanying substantiation and affidavit requirements for transfers pursuant to transfer on death deeds.

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-202 Inheritance or devise and 458-61A-303 Affidavit.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350.

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: Counties and taxpayers need a process in place for the filing of REET affidavits for transfers pursuant to transfer on death deeds by June 12, 2014, the effective date of ESHB [2ESHB] 1117. The amendments to REET Rules 202 and 303 clarify which exemption a taxpayer must claim, what documents must support that exemption, and when an affidavit must be filed to claim the exemption, and who must sign the affidavit.

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 2, Repealed 0.

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

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

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

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

Date Adopted: June 10, 2014.

Dylan Waits  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

**WAC 458-61A-202 Inheritance or devise. (1) Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to



her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviving domestic partner in accordance with a community property agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The transfer of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, and retain a life estate. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, while retaining a life estate, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Transfer on death deeds.** The transfer of real property pursuant to a transfer on death deed to the beneficiary(ies) named in the transfer on death deed occurs upon the death of the transferor and is generally not subject to the real estate excise tax. However, if the transfer of real property pursuant to a transfer on death deed satisfies a contractual obligation of the transferor owed to the beneficiary(ies) designated in the transfer on death deed, real estate excise tax is due on the transfer.

(8) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a trust instrument, a certified copy of the death certificate, and a copy of the trust instrument showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants with rights of survivorship and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order;

(f) **Transfer on death deeds.** If the property is being transferred pursuant to a transfer on death deed, a certified copy of the death certificate is recorded to perfect title.

(g) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through ~~((e))~~ (f) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

**AMENDATORY SECTION** (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

**WAC 458-61A-303 Affidavit.** (1) **Introduction.** This section explains when a real estate excise tax affidavit is required for the transfer of real property. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Affidavit required.** In general, an affidavit must be filed when ownership or title to real property transfers as evidenced by conveyance, deed, grant, assignment, quitclaim, or any other document effectuating the transfer including, but not limited to, the following:

(a) Transfer establishing or separating community property, or in fulfillment of a settlement agreement incident to a dissolution of marriage, legal separation, or declaration of invalidity, or in fulfillment of a community property agreement under RCW 26.16.120;

(b) Transfer resulting from a court order;

(c) Transfer to secure a debt;

(d) Transfer of a taxable easement;

(e) A deed in lieu of foreclosure of a mortgage;

(f) A deed in lieu or declaration of forfeiture of a real estate contract;

(g) Transfer to an heir in the settlement of an estate;

(h) Transfer to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) Transfer of development rights, water rights, or air rights;

(j) Transfer of leasehold improvements;

(k) Boundary line adjustments; ~~((e))~~

(l) Rerecording a document to correct a minor error, such as the legal description or spelling of a name; or

(m) Transfer pursuant to a previously recorded transfer on death deed when the beneficiary(ies) perfect title by presenting a certified copy of the transferor's death certificate.

(3) **Affidavit not required.** The real estate excise tax affidavit is not required nor accepted for the following transactions including, but not limited to:

(a) Transfer of cemetery lots or graves;

(b) Transfer for assignment or release of security, stated on the face of the instrument:

(i) To secure or assign a debt; or

(ii) To provide or release collateral;

(c) A lease of real property that does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust, satisfaction of mortgage, or reconveyance of a deed of trust;

(e) A seller's assignment of deed and contract;

(f) A fulfillment deed pursuant to a real estate contract;

(g) A community property agreement under RCW 26.16.120;

(h) Purchase of an option; ((~~or~~))

(i) An earnest money agreement; or

(j) The recording of a transfer on death deed.

**(4) Examples.**

(a) Lionel Construction has developed a group of new homes. It deeds a street to the homeowners' association upon completion of the development. This is done to clear title, which is an exempt transaction. The affidavit should cite the appropriate exemption rule, describe the exemption as "clearing title for street for homeowners' association," and have attached all department-required documentation.

(b) Webb Corporation transfers its interest in a parcel of real property to its wholly owned subsidiary, Watson Company. This is an exempt transaction because there is no change in beneficial ownership of the property. The affidavit must cite the appropriate exemption rule, describe the exemption as "transfer to wholly owned subsidiary; no change in beneficial ownership," and have attached all documentation required by the department.

**(5) Multiple buyers.** When the transfer of property is to two or more buyers, the affidavit must clearly state the relationship between them as joint tenants, tenants in common, partners, etc., and identify the form and proportion of interest each is acquiring.

**(6) Affidavit must be complete.**

(a) Taxpayers must provide complete and accurate information on the affidavit, as well as all documentation required by the department for claimed tax exemptions. Incomplete affidavits will not be accepted.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person. In the case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

**(7) Documentation required when claiming an exemption.** Claims of exemption from the real estate excise tax must be specific and include the following:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for the exemption, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption, as well as a brief description of the exemption.

**(8) Completion of affidavit.** The department will provide a real estate excise tax affidavit to be completed by the taxpayer and filed with the agent of the county where the property is located. Affidavits will be furnished by the department to the county agents and accessible to the public in one or more formats to be determined by the department. Alternative forms may be used, as long as they are in a format accepted by the department.

In most instances, the affidavit must be signed by the seller or the seller's agent and the buyer or the buyer's agent, under oath, certifying that all information on the affidavit is

complete and correct. However, an affidavit given in connection with the grant of an easement or right of way to a utility company, public utility district or cooperative, or a governmental entity needs to be signed only on behalf of the entity purchasing the utility right of way or easement. In addition, an affidavit given in connection with the transfer of real property pursuant to a transfer on death deed need only be signed on behalf of the transferor by the designated beneficiary(ies) named in the transfer on death deed.

**(9) Duplicate affidavits.** To accommodate the requirement that the affidavit be signed by both the seller and buyer, or agents of each, identical affidavits may be submitted for a single transaction, one bearing the seller's or seller's agent's signature and one bearing the buyer's or buyer's agent's signature. Both affidavits must be complete and have identical information. The county agent will receipt one of the affidavits and attach the other affidavit to the receipted affidavit.

**(10) Retention of records.** The taxpayer must retain all records pertaining to the transaction for a period of at least four years from the date of sale.

**WSR 14-13-040**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-141—Filed June 10, 2014, 2:31 p.m., effective June 12, 2014]

Effective Date of Rule: June 12, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-310-195.

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: The Yakama Nation (YN) and the Washington department of fish and wildlife are continuing the reintroduction of anadromous sockeye salmon in the upper Cle Elum Basin that began in July 2009. Juvenile sampling by the YN at Roza and Prosser dams has shown that juvenile sockeye may remain in the lake for two or more years before migrating to the ocean. If nine inch to fifteen inch "kokanee" being caught are juvenile sockeye that may migrate to the ocean, then a reduced daily limit from sixteen to five fish is consistent with promoting the sockeye reintroduction program. Increasing the trout daily limit to five fish, including kokanee, should reduce the harvest of larger juvenile sockeye, while allowing increased harvest of other trout including nonnative lake trout (mackinaw), eastern brook trout and brown trout that prey on or compete with juvenile sockeye salmon.

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: June 10, 2014.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-310-19500P Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir).** Notwithstanding the provisions of WAC 220-310-195, effective June 12, 2014, until further notice, in waters of Cle Elum Lake and Cooper Lake (Kittitas Co.).

(1) Minimum size for kokanee is 9 inches in length and a maximum size of 15 inches in length.

(2) The trout daily limit is 5 fish, including kokanee.

**WSR 14-13-048  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-142—Filed June 11, 2014, 3:19 p.m., effective June 16, 2014, 9:00 p.m.]

Effective Date of Rule: June 16, 2014, 9:00 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 220-33-01000U and 220-33-01000V; 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: Sets the first 2014 summer season non-Indian mainstem commercial salmon season. Based on preseason forecasts and management guidelines, a total of one thousand eight hundred ninety-three adult upper Columbia summer chinook have been allocated to mainstem commercial non-Indian fisheries. 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. These rules are consistent with compact action as of June 11, 2014. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt rules 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 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: June 11, 2014.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-33-01000V 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:

#### **Mainstem Columbia River**

(1) **Open dates:** 9:00 p.m. June 16 to 5:00 a.m. June 17, 2014.

(2) **Open area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

(3) **Gear:** Drift gillnets only. 8-inch minimum mesh size. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(4) **Allowable Sales:** Chinook, sockeye and shad.

(5) **Sanctuaries:** Elochoman-A, Cowlitz River, Kalama-A, Lewis-A, Washougal, and Sandy rivers.

(6) 24-hour quick reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. June 16, 2014:

WAC 220-33-01000U Columbia River seasons below Bonneville. (14-136)

The following section of the Washington Administrative Code is repealed effective 5:01 a.m. June 17, 2014:

WAC 220-33-01000V Columbia River seasons below Bonneville.

**WSR 14-13-049  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-143—Filed June 11, 2014, 3:38 p.m., effective June 16, 2014, 6:00 a.m.]

Effective Date of Rule: June 16, 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 220-32-05100D; 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 two weekly treaty commercial gillnet salmon periods during the summer season. 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. The quick reporting rule is modified to require quick reporting within twenty-four hours of completing the fish ticket. The intent is that all landings in Areas 1F, 1G and 1H are quick reported within twenty-four hours of completion. Because treaty fisheries can be two to three days long, the modification will allow harvest to be tracked as the fishing period progresses. A total of 18,563 adult summer chinook are available to the treaty tribes for harvest based on the preseason forecast of 67,000 fish. A total of 24,297 sockeye are available to the treaty tribes for harvest based on a forecast of 347,100 sockeye to the Columbia River. 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, June 3, and June 11, 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 11, 2014.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management 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):

Season: 6:00 a.m. June 16 to 6:00 p.m. June 19, 2014; and 6:00 a.m. June 23 to 6:00 p.m. June 26, 2014.

(a) Allowable gear: Gillnets only.

(b) 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.

(c) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Open immediately until further notice.

(b) Allowable 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 for 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:

(i) 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.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Open 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) Allowable 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 for any purpose. 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 in subsection (4)(b) of this section 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 all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours 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 16, 2014:

WAC 220-32-05100D Columbia River salmon seasons above Bonneville Dam. (14-139)

**WSR 14-13-050**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Children's Administration)

[Filed June 12, 2014, 8:06 a.m., effective June 12, 2014, 8:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is changing licensing regulations to meet new legislation regarding ESB [ESSB] 6479 effective June 12, 2014. The prudent parenting legislation allows foster children placed with caregivers in foster homes and facilities to participate in normal childhood activities based on a reasonable and prudent parent standard. The department will allow caregivers to approve in-state overnight travel for less than seventy-two hours (including travel to bordering counties in Idaho and Oregon) and a child's participation in routine activities, without permission from the social worker.

Citation of Existing Rules Affected by this Order: Amending 388-148-0455 and 388-148-0550.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031.

Other Authority: ESB [ESSB] 6479.

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: Washington enacted a law providing caregivers authority to allow children placed in their care to participate in normal childhood activities based on a reasonable and prudent parent standard. The reasonable and prudent parent standard means the standard of care used by a caregiver in determining whether to allow a child in their care to participate in extracurricular, enrichment, and social activities, without social worker approval. These activities include in-state travel and travel to bordering counties in Oregon and Idaho for less than seventy-two hours. This standard is characterized by careful and thoughtful parental decision making

that is intended to maintain a child's health, safety, and best interest while encouraging the child's emotional and developmental growth. This rule making implements those changes June 12, 2014, as required.

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

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

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

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

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

Date Adopted: June 9, 2014.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

**WAC 388-148-0455 Do I need permission to travel on an overnight trip or out-of-state with my foster child? You do not need permission to travel in-state with a foster child for a period of time less than seventy-two hours. (Travel to bordering counties in Idaho and Oregon is also considered in-state travel.)** Contact the child's ~~((social))~~ DCFS worker with the agency having legal custody of the child for written permission prior to ~~((overnight trips,))~~ out-of-state, or out-of-country travel, or in-state travel over seventy-two hours.

AMENDATORY SECTION (Amending WSR 01-18-037, filed 8/28/01, effective 9/28/01)

**WAC 388-148-0550 May my foster children participate in routine activities without a licensed provider supervising the activity? ~~((Contact the child's social))~~ You do not need DCFS worker ((for prior)) approval for your foster child's participation in routine activities without a licensed provider supervising the activity, such as clubs, social outings with classmates or friends. You may approve normal childhood activities using a reasonable and prudent parenting standard. Overnight stays over seventy-two hours requires DCFS worker approval. Any activities requiring travel must comply with WAC 388-148-0455.**

~~((Note: The social worker with the agency having legal custody of the child is the contact person.))~~

**WSR 14-13-053**  
**EMERGENCY RULES**  
**OFFICE OF**

**FINANCIAL MANAGEMENT**

[Filed June 12, 2014, 8:19 a.m., effective June 12, 2014, 8:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: SSB 5173 allows employees of state agencies, political subdivisions, and institutions of higher education to take two unpaid holidays for reasons of faith or conscience. Leave may only be denied if the employee is necessary to maintain public safety or approval results in an "undue hardship" as defined by the office of financial management in rule. This new rule and the rule amendment address "undue hardship" for purposes of this bill.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 357-31-327].

Statutory Authority for Adoption: Chapter 168, Laws of 2014 (SSB 5173).

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: Upon the effective date of this bill, employees will be able to request unpaid leave for reasons of faith and conscience. Employing entities will need immediate guidance on how to determine if such a request meets the definition of undue hardship, so an immediate definition is needed.

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

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

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

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

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

Date Adopted: June 12, 2014.

Roselyn Marcus  
 Assistant Director for  
 Legal and Legislative Affairs  
 Rules Coordinator

NEW SECTION

**WAC 357-31-052 Is an employee entitled to any unpaid holidays?** Employees are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employer must allow the employee to take the unpaid holiday when requested unless the employee's absence would impose an undue hardship on the employer or the employee is neces-

sary to maintain public safety. For this purpose "undue hardship" is defined in WAC 82-56-020.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

**WAC 357-31-327 When must an employer grant leave without pay?** An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.

**WSR 14-13-054**  
**EMERGENCY RULES**  
**OFFICE OF**

**FINANCIAL MANAGEMENT**

[Filed June 12, 2014, 8:23 a.m., effective June 12, 2014, 8:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: SSB 5173 allows employees of state agencies, political subdivisions, and institutions of higher education to take two unpaid holidays for reasons of faith or conscience. Leave may only be denied if the employee is necessary to maintain public safety or approval results in an "undue hardship" as defined by the office of financial management in rule. These rules define "undue hardship" for purposes of this bill.

Statutory Authority for Adoption: Chapter 168, Laws of 2014 (SSB 5173).

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: Upon the effective date of this bill, employees will be able to request unpaid leave for reasons of faith and conscience. Employing entities will need immediate guidance on how to determine if such a request meets the definition of undue hardship, so an immediate definition is needed.

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 3, 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 3, Amended 0, Repealed 0.

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

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

Date Adopted: June 12, 2014.

Roselyn Marcus  
Assistant Director for  
Legal and Legislative Affairs  
Rules Coordinator

**[NEW SECTION]**

**WAC 82-56-010 Purpose** (1) Chapter 168, laws of 2014 provides that state and political subdivision employees are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employer must allow the employee to take unpaid leave for up to two such holidays unless the employee's absence would impose an undue hardship on the employer or the employee is necessary to maintain public safety. Chapter 168, Laws of 2014 directs the director of the office of financial management to establish the definition of "undue hardship" by rule.

(2) The purpose of this chapter is to establish the definition of "undue hardship" for purposes of chapter 168, laws of 2014.

(3) This chapter applies to employees of the state and its political subdivisions, including:

- (a) Employees of school districts;
- (b) Nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months;
- (c) Employees of public institutions of higher education; and
- (d) Employees of community colleges, technical colleges, and workforce training programs.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**[NEW SECTION]**

**WAC 82-56-020 Definition of undue hardship** For purposes of chapter 168, laws of 2014, "undue hardship" means an action requiring significant difficulty or expense to the employer. The following factors should be considered in

determining whether approving unpaid leave results in an undue hardship to the employer:

(1) The number, composition, and structure of staff employed by the employing entity or in the requesting employee's program.

(2) The financial resources of the employing entity or the requesting employee's program.

(3) The number of employees requesting leave for each day subject to such a request.

(4) The financial impact on the employing entity or requesting employee's program resulting from the employee's absence and whether that impact is greater than a de minimus cost to the employer in relation to the size of the employing entity or requesting employee's program.

(5) Impact on the employing entity, the requesting employee's program or public safety.

(6) Type of operations of the employing entity or requesting employee's program.

(7) Geographic location of the employee or geographic separation of the particular program to the operations of the employing entity.

(8) Nature of the employee's work.

(9) Deprivation of another employee's job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.

(10) Any other impact on the employing entity's operation or requesting employee's program due to the employee's absence.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**[NEW SECTION]**

**WAC 82-56-030 Application of definition of undue hardship to request** (1) In determining whether the employee's absence would result in an undue hardship to the employing entity, the employer must make a case by case determination based on the specific objective facts and circumstances, not assumed information, present at the time of each request.

(2)(a) The existence of a collective bargaining agreement or bona fide seniority system does not in and of itself relieve the employing entity from determining whether there would be an undue hardship if the request was granted.

(b) When an employee is represented by a union, in determining whether the employee's absence would result in an undue hardship, the request must be reconciled, when feasible, with the provisions of the applicable collective bargaining agreement.

(c) If the employee is covered under a collective bargaining agreement, the employing agency must determine whether the request can be granted without violating that agreement.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.



**WSR 14-13-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed June 12, 2014, 8:49 a.m., effective June 12, 2014, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Establish rates for farm internship program classifications and update a reporting rule for workers' compensation insurance. This emergency rule making is necessary as a result of SSB 5123 (chapter 131, Laws of 2014) effective June 12, 2014, which establishes a farm internship program for small employers in a variety of counties.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-31014 Farming and agriculture; and new WAC 296-17-89506 Farm internship program industrial insurance, accident fund, medical aid, stay at work, and supplemental pension by class.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

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: Without this emergency rule making, rates for the farm internship classifications could not become effective. The new rates and updated reporting rule are necessary to ensure proper reporting of hours and collection of premiums for employers participating in the farm internship program.

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

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

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

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

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

Date Adopted: June 12, 2014.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 10-17-028, filed 8/9/10, effective 9/9/10)

**WAC 296-17-31014 Farming and agriculture. (1) Does this same classification approach apply to farming or agricultural operations?**

Yes, but it may not appear so without further explanation. We classify farming and agricultural operations by type of crop or livestock raised. This is done because each type of

grower will use different processes and grow or raise multiple crops and livestock which have different levels of hazards. It is common for farmers and ranchers to have several basic classifications assigned to their account covering various types of crops or livestock. If you fail to keep the records required in the auditing recordkeeping section of ~~((this manual))~~ chapter 296-17 WAC, and we discover this, we will assign all worker hours for which records were not maintained to the highest rated classification applicable to the work performed.

**(2) I am involved in diversified farming and have several basic classifications assigned to my business. Can I have one classification assigned to my account to cover the different types of farming I am involved in?**

Yes, your account manager can assist you in determining the single classification that will apply to your business. The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

**(3) How do you determine what single farming classification will be assigned to my business?**

The approach used to assign a single classification to a farming business is much the same as we use for construction or erection contractors. To do this, we will need a break down of exposure (*estimate of hours to be worked by your employees*) by type of crop or livestock being cared for (*classification*). This information will be used to estimate the premium which would be paid using multiple classifications. The total premium is then divided by the total estimated hours to produce an average rate per hour. We will select the classification assigned to your business which carries the hourly premium rate which is the closest to the average rate that we produced from the estimated hours. Classification 4806 is not to be assigned to any grower as the single farming classification.

**(4) How will I know what single farming classification you have assigned to my business?**

We will send you a written notice of the basic classification that will apply to your business.

**(5) If I requested a single classification for my farming operation can I change my mind and use multiple classifications?**

Yes, but you will need to call your account manager to verify the applicable classifications.

The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

**(6) I am a farm labor contractor. How is my business classified?**

If you are a farm labor contractor we will assign the basic classification that applies to the type of crop being grown, or livestock being cared for. If you contract to supply both machine operators and machinery on a project, all operations are to be assigned to classification 4808.

**(7) Farm internship pilot program. Who may participate in the farm internship pilot program created by the**

**department as a result of Title 49 RCW, effective (~~June 10, 2010~~) June 12, 2014?**

Small farms with annual sales of less than two hundred fifty thousand dollars per year located in San Juan (~~(☞)~~), Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, and Thurston counties that receive a special certification from the department may have farm interns. Employers who qualify may report no more than three farm interns. Farm internship program risk classifications are: WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816.

**NEW SECTION**

**WAC 296-17-89506 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class.**

**Base Rates Effective  
June 12, 2014**

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund
4814	0.1295	0.0025	0.1379
4815	0.2757	0.0053	0.3291
4816	0.4551	0.0088	0.4899

**WSR 14-13-061  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 14-145—Filed June 12, 2014, 2:28 p.m., effective June 12, 2014, 2:28 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000F; 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: June 12, 2014.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-24-04000G 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:

- June 13 through June 17, 2014,
- June 20 through June 24, 2014,
- June 27 through June 30, 2014.

(2) Landing and possession limit of 20 Chinook per boat per each entire open period for the entire Catch Areas 1, 2, 3 and 4.

(3) It is unlawful for any boat to land or possess more than 20 Chinook during any open period.

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

(5) 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.

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

(7) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section.

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(8) 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.

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

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

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

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

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000F All-citizen commercial salmon troll.  
(14-137)

### **WSR 14-13-063**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Operations Support and Services Division)  
(Background Check Central Unit)

[Filed June 12, 2014, 3:18 p.m., effective June 12, 2014, 3:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The background check central unit is amending two sections of chapter 388-06 WAC related to what crimes may be considered disqualifying by children's administration (CA) when licensing or approving an individual to have unsupervised access to children. This rule making is being filed on behalf of CA to comply with section 4, chapter 88, Laws of 2014 (SSB 6095).

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-06-0170 and 388-06-0180.

Statutory Authority for Adoption: Chapter 88, Laws of 2014; RCW 43.43.832.

Other Authority: P.L. 105-89; RCW 74.15.030.

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: During the 2014 legislative session, chapter 88, Laws of 2014 (SSB 6095) was signed into law. Section 4 of SSB 6095 amends RCW 74.13.700 to state that CA is only authorized to deny or delay licensure or approval to have unsupervised access to children when the applicant's criminal history includes a crime or infraction involving the categories of crimes listed in the federal Adoption and Safe Families Act or that otherwise relates to child safety, permanence or well-being. WAC 388-06-0170 and 388-06-0180 of chapter 388-06 WAC describe disqualifying crimes for CA providers and licensees and must be revised to comply with the new statutory requirement.

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 2, Repealed 0.

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

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

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

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

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

Date Adopted: June 5, 2014.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0170 Will a criminal conviction permanently prohibit me from being licensed, contracted, or authorized to have unsupervised access to children or to individuals with developmental disability?** (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, certified or authorized to have unsupervised access to children or to individuals with developmental disability. Those felony convictions are as follows:

- (a) Child abuse and/or neglect;
- (b) Spousal abuse;
- (c) A crime against a child (including child pornography);
- (d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault or battery); or

(e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children or individuals with developmental disabilities in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC 388-06-0170 (1)(a) through (e) you will not be able to:

- (a) Receive a license to provide care to children;
- (b) Be approved for adoption of a child;
- (c) Be a contractor;
- (d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children or to individuals with a developmental disability;
- (e) Volunteer or participate as an intern in a home or facility that offers care to children or to individuals with a developmental disability; or
- (f) Provide any type of care to children or to individuals with a developmental disability, if the care is funded by the state.

**AMENDATORY SECTION** (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0180 Are there other criminal convictions that will prohibit me from being licensed, contracted, or authorized to have unsupervised access to children or from working with children or individuals with a developmental disability?** The department must disqualify you from licensing, contracting, certification, or from having unsupervised access to children or to individuals with a developmental disability if it has been less than five years from a conviction for the following crimes:

- (1) Any felony physical assault or battery offense not included in WAC 388-06-0170;
- (2) (~~Any sex offense not included in WAC 388-06-0170;~~

~~(3) Any felony conviction not included in WAC 388-06-0170; or~~

~~(4))~~ Felony violation of the following drug-related crimes:

(a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW));

(b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);

(c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);

(d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or

(e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(5) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from having unsupervised access to children or individuals with a developmental disability.

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

## WSR 14-13-064

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Operations Support and Services Division)

[Filed June 12, 2014, 3:20 p.m., effective June 12, 2014, 3:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The background check central unit is amending WAC 388-06-0620 related to DSHS employee background check requirements. This rule making is being filed on behalf of human resources division to comply with sections 1 and 2, chapter 88, Laws of 2014 (SSB 6095).

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0620.

Statutory Authority for Adoption: Chapter 88, Laws of 2014; RCW 43.43.832.

Other Authority: RCW 43.20A.710.

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: During the 2014 legislative session, chapter 88, Laws of 2014 (SSB 6095) was signed into law. Emergency revisions are necessary to implement sections 1 and 2 of SSB 6095 which amends RCW 43.43.842 and 43.20A.710 to prohibit the department and its providers from automatically disqualifying an applicant if the department reviewed the individual's otherwise disqualifying crim-

inal history through the 2002 background assessment review team process and determined that the individual could remain in a department-covered position. The provisions of this rule allow continued services.

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

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

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

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

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

Date Adopted: June 12, 2014.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-03-003, filed 1/8/09, effective 2/8/09)

**WAC 388-06-0620 What information is considered in a background check conducted by DSHS and what are the results of the background check used for?** (1) The background check information considered by the DSHS secretary will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(3) If the applicant or employee's criminal history was reviewed in 2002 by DSHS through its background assessment review team (BART) process, and if DSHS determined the employee could remain in a covered position, the applicant or employee will not be disqualified based upon criminal history, including his or her conviction record, that was known and considered during the BART process.

(4) Background information that was the subject of a pardon, annulment, or other equivalent procedure will not disqualify an applicant and/or employee from having unsupervised access to vulnerable adults, juveniles and children.

**WSR 14-13-077**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed June 16, 2014, 10:16 a.m., effective July 1, 2014]

Effective Date of Rule: July 1, 2014.

Purpose: To remove language governing the duration of basic training approved by the Washington state training and registry system (STARS) required for child care center staff.

Citation of Existing Rules Affected by this Order: Amending WAC 170-295-1060.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

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

Reasons for this Finding: Emergency rules are necessary for the preservation of the public health, safety, and general welfare because the new STARS curriculum for providers contains additional training on safe sleep practices for infants to prevent sleep related incidents. Further, the new curriculum incorporates new research, updated child guidance training aligned with best practices, and additional information tied to early brain and biological development, and is aligned with department of early learning's child care quality framework. Removal of language regarding duration of the training is needed because the new curriculum requires more than twenty hours to complete. Observing the time requirements of notice and opportunity to comment on adoption of permanent rules would be contrary to the public interest as it would delay improved provider training.

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 1, Repealed 0.

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

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

Date Adopted: June 16, 2014.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-295-1060 What initial and ongoing state training and registry system (STARS) training is required for child care center staff?** The director, program supervisor and lead teachers must register with the STARS registry and complete one of the following trainings within the first six months of employment or of being granted an initial license:

(1) ~~((Twenty clock hours or two college quarter credits of))~~ Basic training approved by the Washington state training registry system (STARS);

(2) Current child development associate certificate (CDA) or equivalent credential, or twelve or more college credits in early childhood education or child development; or

(3) Associate of arts (AA), associate of arts and sciences or higher college degree in early childhood education or child development.

**WSR 14-13-109**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-146—Filed June 17, 2014, 4:36 p.m., effective July 1, 2014]

Effective Date of Rule: July 1, 2014.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25000S; and amending WAC 220-56-250.

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 is intended to protect yelloweye and canary rockfish, two species managed under rebuilding plans by the Pacific Fishery Management Council. The closure will reduce the amount of yelloweye and canary rockfish that are incidentally caught when anglers are targeting lingcod in deeper water. This rule conforms to measures approved through the Pacific Fishery Management Council and federal rules adopted by the National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 17, 2014.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-56-25000S Lingcod—Areas and seasons.**  
Notwithstanding the provisions of WAC 220-56-250, effective July 1 through August 31, 2014, in waters of Marine Area 2, it is unlawful to fish for, retain or possess lingcod south of 46°58 N. Latitude and seaward of 30 fathoms on Fridays and Saturdays.

REPEALER

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

WAC 220-56-25000S Lingcod—Areas and seasons.

**WSR 14-13-110**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-147—Filed June 17, 2014, 4:36 p.m., effective June 17, 2014, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100E; 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 two weekly treaty commercial gillnet salmon periods during the summer season. 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. The quick reporting rule is modified to require quick reporting

within twenty-four hours of completing the fish ticket. The intent is that all landings in Areas 1F, 1G and 1H are quick reported within twenty-four hours of completion. Because treaty fisheries can be two to three days long, the modification will allow harvest to be tracked as the fishing period progresses. A total of 18,563 adult summer chinook are available to the treaty tribes for harvest based on the preseason forecast of 67,000 fish. A total of 24,297 sockeye are available to the treaty tribes for harvest based on a forecast of 347,100 sockeye to the Columbia River. 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, June 3, and June 11, 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 17, 2014.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-32-05100F Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 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):  
Season: Open immediately to 6:00 p.m. June 19, 2014; and 6:00 a.m. June 23 to 6:00 p.m. June 26, 2014.

(a) Allowable gear: Gillnets only; 7-inch minimum mesh restriction.

(b) 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.

(c) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Open immediately until further notice.

(b) Allowable 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 for 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:

(i) 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 Reserva-

tion (CTWS), and in the 2011 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Open 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) Allowable 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 for any purpose. 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 in subsection (4)(b) of this section 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 all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours 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:

WAC 220-32-05100E Columbia River salmon seasons above Bonneville Dam. (14-143)

#### **WSR 14-13-113**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed June 18, 2014, 11:06 a.m., effective June 18, 2014, 11:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In the interest of protecting the swine industry in Washington state of the rapidly spreading porcine epidemic diarrhea virus (PEDv), an additional requirement is being put on all swine imported into Washington. All certificate of veterinary inspections must contain a certification that

the swine being imported have not originated from a premises known to be affected by PEDv and have not been exposed to PEDv in the last thirty days.

Citation of Existing Rules Affected by this Order: Amending WAC 16-54-111.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

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

Reasons for this Finding: PEDv was first diagnosed in the United States in May 2013. Since then it has spread to twenty-four states and has killed as [an] estimated four to seven million suckling piglets. The source of entry into the United States at this point is undetermined and the virus appears to spread by a range of methods; not just the live animal imports. To protect the swine industry in the state of Washington the requirement is imperative as swine producers are importing more swine now due to upcoming fair seasons and shows.

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 1, Repealed 0.

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

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

Date Adopted: June 18, 2014.

Mark Streuli  
Deputy Director

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

#### **WAC 16-54-111 Swine—Importation and testing requirements. Import health requirements.**

(1) All swine entering Washington state must be accompanied by an entry permit, a certificate of veterinary inspection, and official USDA approved identification. The certificate of veterinary inspection must contain the following certification: "To the best of my knowledge, swine represented on this certificate have not originated from a premises known to be affected by Porcine Epidemic Diarrhea virus (PEDv), and have not been exposed to PEDv within the last 30 days." The certification must be signed by both the owner of the swine and the certifying veterinarian.



(2) Feral swine are prohibited in Washington state.

**Import test requirements.**

(3) **Brucellosis.** All intact male and intact female swine more than six months of age must be tested negative for brucellosis within thirty days before entering Washington state or must originate from a USDA validated brucellosis free herd or state (Swine Brucellosis Control/Eradication State-Federal-Industry Uniform Methods and Rules, April, 1998).

(4) **Pseudorabies.** No test is required from states recognized as Stage IV or Stage V by Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003.

(5) A negative pseudorabies test within thirty days before entry is required for swine from any state or area that loses Stage IV or Stage V status.

**Exemptions to import test requirements.**

(6) Swine shipped directly to a federally inspected slaughter plant for immediate slaughter are exempt from testing requirements.

**Swine semen and embryos.**

(7)(a) Swine semen and swine embryos entering Washington state for insemination of swine or implantation into swine shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies serologic test within thirty days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within thirty days prior to the collection of the semen or embryos.

(b) Brucellosis testing is not required on donor swine from brucellosis validated free states.

(c) Pseudorabies testing is not required on donor swine from pseudorabies Stage IV or Stage V states.