

**WSR 17-18-007
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed August 24, 2017, 12:04 p.m., effective September 1, 2017]

Effective Date of Rule: September 1, 2017.

Purpose: Enact a six percent increase in working connections child care and seasonal child care subsidy program rates paid to child care centers and contracted seasonal day camps.

Citation of Rules Affected by this Order: Amending WAC 170-290-0200.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070,

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: SSB 5883 (2017-19 operating budget) funded a six percent increase to child care subsidies paid to child care centers, effective September 1, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 24, 2017.

Heather Moss
Director

AMENDATORY SECTION (Amending WSR 16-19-107, filed 9/21/16, effective 10/22/16)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) Base rate. DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table:

| | | Infants (One month - 11 mos.) | Toddlers (12 - 29 mos.) | Preschool (30 mos. - 6 yrs not attending kindergarten or school) | School-age (5 - 12 yrs attending kin- dergarten or school) |
|----------------|----------|---------------------------------------|---------------------------------------|---|--|
| Region 1 | Full-Day | \$((32.10)) <u>34.03</u> | \$((27.00)) <u>28.62</u> | \$((25.50)) <u>27.03</u> | \$((24.02)) <u>25.46</u> |
| | Half-Day | \$((16.05)) <u>17.02</u> | \$((13.50)) <u>14.31</u> | \$((12.75)) <u>13.52</u> | \$((12.01)) <u>12.73</u> |
| Spokane County | Full-Day | \$((32.84)) <u>34.81</u> | \$((27.62)) <u>29.28</u> | \$((26.10)) <u>27.67</u> | \$((24.58)) <u>26.05</u> |
| | Half-Day | \$((16.42)) <u>17.41</u> | \$((13.81)) <u>14.64</u> | \$((13.05)) <u>13.84</u> | \$((12.29)) <u>13.03</u> |
| Region 2 | Full-Day | \$((32.44)) <u>34.39</u> | \$((27.06)) <u>28.68</u> | \$((25.10)) <u>26.61</u> | \$((22.20)) <u>25.53</u> |
| | Half-Day | \$((16.22)) <u>17.20</u> | \$((13.53)) <u>14.34</u> | \$((12.55)) <u>13.31</u> | \$((11.10)) <u>11.77</u> |
| Region 3 | Full-Day | \$((42.92)) <u>45.50</u> | \$((35.78)) <u>37.93</u> | \$((30.92)) <u>32.78</u> | \$((30.02)) <u>31.82</u> |
| | Half-Day | \$((21.46)) <u>22.75</u> | \$((17.89)) <u>18.97</u> | \$((15.46)) <u>16.39</u> | \$((15.01)) <u>15.91</u> |
| Region 4 | Full-Day | \$((49.94)) <u>52.94</u> | \$((41.70)) <u>44.20</u> | \$((35.00)) <u>37.10</u> | \$((31.52)) <u>33.41</u> |
| | Half-Day | \$((24.97)) <u>26.47</u> | \$((20.85)) <u>22.10</u> | \$((17.50)) <u>18.55</u> | \$((15.76)) <u>16.71</u> |
| Region 5 | Full-Day | \$((36.62)) <u>38.82</u> | \$((31.52)) <u>33.41</u> | \$((27.74)) <u>29.40</u> | \$((24.62)) <u>26.12</u> |
| | Half-Day | \$((18.31)) <u>19.41</u> | \$((15.76)) <u>16.71</u> | \$((13.87)) <u>14.70</u> | \$((12.31)) <u>13.06</u> |
| Region 6 | Full-Day | \$((36.02)) <u>38.18</u> | \$((30.92)) <u>32.78</u> | \$((27.00)) <u>28.62</u> | \$((26.42)) <u>28.01</u> |
| | Half-Day | \$((18.01)) <u>19.09</u> | \$((15.46)) <u>16.39</u> | \$((13.50)) <u>14.31</u> | \$((13.21)) <u>14.01</u> |

(Chart effective ((~~07/01/16~~)) 09/01/17)

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 and 170-295-0050 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licenser to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has

reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

WSR 17-18-011
EMERGENCY RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed August 24, 2017, 2:47 p.m., effective August 24, 2017, 2:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is revising the requirements a hospital must meet to perform and be paid for bariatric surgery provided to eligible apple health clients. To qualify, a hospital must be accredited by the metabolic and bariatric surgery accreditation and quality improvement program (MBSA-QIP).

Citation of Rules Affected by this Order: Amending WAC 182-550-2301.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: Under the current rules, one hospital in Washington state is approved to perform and be paid for bariatric surgery for apple health clients. The approved hospital does not serve the entire state. This creates an access to care issue for apple health clients located in counties which the approved hospital does not serve. This emergency rule is necessary to lessen the existing requirements to accreditation by MBSAQIP while the permanent rules are promulgated. The agency filed the CR-101 for the permanent rules process under WSR 17-18-010, on August 24, 2017.

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 the Request of a Non-governmental 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 1, 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: August 24, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-2301 Hospital and medical criteria requirements for bariatric surgery. (1) The medicaid agency pays a hospital for bariatric surgery and bariatric sur-

gery-related services only when the surgery is provided in an inpatient hospital setting and only when:

(a) The client;

(i) Qualifies for bariatric surgery by successfully completing all requirements under WAC 182-531-1600; and
~~((b) The client)~~ (ii) Continues to meet the criteria to qualify for bariatric surgery under WAC 182-531-1600 up to the actual surgery date;

~~(e) The hospital providing the bariatric surgery and bariatric surgery-related services meets the requirements in this section and other applicable WAC; and~~

~~(d))~~;

(b) The hospital;

(i) Is accredited by the metabolic and bariatric surgery accreditation and quality improvement program (MBSA-QIP); and

(ii) Receives prior authorization from the agency before performing a bariatric surgery for a Washington apple health client.

~~(2) ((A hospital must meet the following requirements to be paid for bariatric surgery and bariatric surgery-related services provided to an eligible Washington apple health client: The hospital must:~~

~~(a) Be approved by the agency to provide bariatric surgery and bariatric surgery-related services and:~~

~~(i) For dates of admission after June 30, 2007, be located in Washington state or approved bordering cities (see WAC 182-501-0175);~~

~~(ii) For dates of admission after June 30, 2007, be located in Washington state, or be an agency-designated critical border hospital;~~

~~(b) Have an established bariatric surgery program in operation under which at least one hundred bariatric surgery procedures have been performed. The program must have been in operation for at least five years and be under the direction of an experienced board-certified surgeon. In addition, the agency requires the bariatric surgery program to:~~

~~(i) Have a mortality rate of two percent or less;~~

~~(ii) Have a morbidity rate of fifteen percent or less;~~

~~(iii) Document patient follow-up for at least five years postsurgery;~~

~~(iv) Have an average loss of at least fifty percent of excess body weight achieved by patients at five years postsurgery; and~~

~~(v) Have a reoperation or revision rate of five percent or less.~~

~~(c) Submit documents to the agency's division of health care services that verify the performance requirements listed in this section.~~

~~(3) The agency waives the program requirements listed in subsection (2)(b) of this section if the hospital participates in a statewide bariatric surgery quality assurance program such as the Surgical Clinical Outcomes Assessment Program (COAP).~~

~~(4))~~ See WAC 182-531-1600(13) for requirements for surgeons who perform bariatric surgery.

~~((5))~~ (3) Authorization does not guarantee payment. Authorization for bariatric surgery and bariatric surgery-related services is valid only if:

(a) The client is eligible on the date of admission and date of service; and

(b) The hospital and professional providers meet the criteria in this section and other applicable WAC to perform bariatric surgery or to provide bariatric surgery-related services.

WSR 17-18-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-211—Filed August 24, 2017, 4:50 p.m., effective August 26, 2017]

Effective Date of Rule: August 26, 2017.

Purpose: Amends recreational freshwater fishing rules for South Pond at the Bogachiel Hatchery.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to extend the trout fishery in South Pond at the Bogachiel Hatchery because [of] recent restrictions to the public access to Wentworth Lake, hatchery trout normally planted into Wentworth Lake are being planted in South Pond which will provide additional angling opportunity. The agency is considering making this fishery a permanent rule.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 24, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000J Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-312-020, effective August 26, 2017 until further notice, it is permissible to fish in those waters of South Pond at the Bogachiel Hatchery.

WSR 17-18-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-215—Filed August 24, 2017, 4:52 p.m., effective August 25, 2017, 5:00 a.m.]

Effective Date of Rule: August 25, 2017, 5:00 a.m.

Purpose: Amends Puget Sound commercial salmon rules for Area 7.

Citation of Rules Affected by this Order: Repealing WAC 220-47-50100A.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Area 7 targeting the United States share of Fraser River pink salmon. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 24, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-50100A Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective 5:00 a.m. August 25, 2017, until further notice, it is unlawful to take,

fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area 7

(1) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed below:

| Hours | Dates |
|-------------------|-------------------------------|
| 5:00 AM - 9:00 PM | August 25 and August 26, 2017 |

(a) It is unlawful to retain unmarked Chinook, unmarked coho, chum, and sockeye.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book in accordance with requirements of WAC 220-354-180.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(2) "Quick Reporting Fisheries" All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-301-030), are designated as "Quick Reporting Required" pursuant to WAC 220-354-090.

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 9:01 p.m. August 26, 2017:

WAC 220-47-50100A Puget Sound all-citizen commercial salmon fishery—Open periods.

WSR 17-18-016

EMERGENCY RULES

UNIVERSITY OF WASHINGTON

[Filed August 25, 2017, 9:35 a.m., effective August 25, 2017, 9:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring the university into compliance with updates to RCW 42.56.120(2) as amended by chapter 304, Laws of 2017.

Citation of Rules Affected by this Order: Amending WAC 478-276-100.

Statutory Authority for Adoption: RCW 28B.20.130, 42.56.100, 42.56.040 (1)(d), and 42.56.120 (as amended by chapter 304, Laws of 2017).

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

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The University of Washington finds good cause that new emergency rule WAC 478-276-100 is necessary for the following reasons. The Public Records Act is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120 (section 3, chapter 304, Laws of 2017) to require that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in WAC 478-276-100. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 478-276-100 describes the circumstances under which the office will waive copy fees.

There is insufficient time under permanent rule-making procedures for the office to bring its copy fees into statutory compliance by July 23, 2017, or within a short time after. The office also finds that it is in the general welfare and the public interest, and benefits requesters and the agency, to adopt the emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. Therefore, emergency rule making is necessary. The office intends to proceed with permanent rule making on these subjects in the near future.

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 the Request of a Non-governmental 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: August 25, 2017.

Barbara Lechtanski
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 13-05-073, filed 2/19/13, effective 3/22/13)

WAC 478-276-100 Copying fees. (1) **Copying facilities available.** Facilities shall be made available to requestors for the copying of public records as set forth under WAC 478-276-095, except when and to the extent that this would unreasonably disrupt the operations of the public records office.

(2) **Copying costs.** ~~((The university may charge for providing copies of public records. Charges are posted on the office's web site.~~

~~((3) **Other costs.**)) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the University of Washington declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions. Therefore, the University of Washington adopts the following fees consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017:~~

~~((a) Fifteen cents per page for photocopies of public records, and printed copies of electronic public records when requested by the person requesting records;~~

~~((b) The university may charge ~~((for nonpaper media))~~ the actual cost of any digital storage media or device (for example, without limitation, compact disks (CDs), digital versatile disks (DVDs), audiotape, or videotape) used to provide copies, ~~((packaging,))~~ the actual cost of any container and envelope used to mail or transmit the copies to the requestor, and the actual postage or delivery charge, or other charges as allowed by law. Such charges shall not exceed the amount necessary to reimburse the university for actual costs.~~

~~((4)) (3) **Deposits.** The university may require a ten percent deposit on copying or other charges. Any required deposit must be paid before the request is processed.~~

~~((5)) (4) **Prepayment.** The public records office shall not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth above. Fee waivers are an exception and are available at the discretion of the public records officer. If payment is not received by the public records office within fifteen business days of issuance of the university's notice of availability, the university may consider the request closed, and any records or copies responsive to such request shall be subject to disposition as provided under WAC 478-276-105.~~

Purpose: To establish a definition of absence in public schools that is in line with the federal definition. Office of superintendent of public instruction's (OSPI) existing rules do not currently define absences.

Citation of Rules Affected by this Order: New chapter 392-401 WAC; and repealing WAC 392-400-325.

Statutory Authority for Adoption: RCW 28A.300.046.

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: Under the agency's current rule, school districts are required to report all school-related activities to the state as excused absences, including school field trips. That definition does not align with the definition of absence set by the United States Department of Education for federal public education data reporting purposes. The immediate adoption of this emergency rule is necessary to align the state and federal reporting requirements and provide for consistent data collection before the start of the 2017-18 school year. Clarifying the definition of absence for reporting purposes will help ensure that student absences for activities that are a part of the student's scheduled instructional school day do not contribute to the school's chronic absenteeism rates.

OSPI filed the CR-102 on August 23, 2017 (WSR 17-17-167), opening the public comment period for further stakeholder discussion regarding student absence reporting. The public hearing will be held on October 31, 2017, 1:00 p.m. at OSPI.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 0, Repealed 0.

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

Date Adopted: August 25, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

WSR 17-18-017

EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 25, 2017, 12:20 p.m., effective August 25, 2017, 12:20 p.m.]

Effective Date of Rule: Immediately upon filing.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-400-325 Statewide definition of excused and unexcused daily absences.

Chapter 392-401 WAC

STATEWIDE DEFINITION OF ABSENCE, EXCUSED AND UNEXCUSED

NEW SECTION

WAC 392-401-005 Purpose. The purpose of this chapter is to provide a definition of absence to districts that supports accurate and consistent attendance data collection across the state. This effort will support the state and districts to address the challenge of chronic absenteeism, in an effort to improve learning outcomes and success in school for all students and to support the whole child.

NEW SECTION

WAC 392-401-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school.

NEW SECTION**WAC 392-401-015 Definition of absent or absence.**

- (1) "Absent" or "absence" means a student is:
- Not physically present on school grounds; and
 - Not participating in instruction or instruction-related activities at an approved off-grounds location for at least fifty percent of the student's scheduled school day.
- (2) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC should be reported as excused absences, unless the student is receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC.
- (3) A student who is marked tardy to class is not absent unless the student otherwise meets the criteria for absence provided in WAC 392-401-015(1).

NEW SECTION

WAC 392-401-020 Excused absences. The following are valid excuses for absences from school:

- Participation in a district or school approved activity, that is not instruction-related;
- Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental or optometry) for the student or person for who the student is legally responsible;
- Family emergency including, but not limited to, a death or illness in the family;
- Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;
- Court, judicial proceeding, or serving on a jury;
- Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
- State-recognized search and rescue activities consistent with RCW 28A.225.055;
- Absence directly related to the student's homeless status;

(9) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

(10) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC, unless the student is receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

(11) Principal (or designee) and parent, guardian, or emancipated youth mutually agreed upon approved activity.

The school principal (or designee) has the authority to determine if an absence meets the above criteria for an excused absence.

NEW SECTION

WAC 392-401-030 Unexcused absences. Any absence from school is unexcused unless it meets one of the criteria provided in WAC 392-401-015.

WSR 17-18-019

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-202—Filed August 25, 2017, 1:48 p.m., effective September 1, 2017]

Effective Date of Rule: September 1, 2017.

Purpose: Amends recreational freshwater fishing rules for eastside rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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 *U.S. v. Oregon* technical advisory committee met on August 7 and 14 to review upriver steelhead returns and downgraded the return of Group A steelhead return to fifty-four thousand. The 2017 preseason forecast was one hundred twelve thousand one hundred Group A steelhead. With a significant reduction to the preseason forecast for Group A steelhead and ongoing concerns between comanagers for Group B steelhead Washington department of fish and wildlife (WDFW) believes it is important to protect steelhead moving through the Snake River. WDFW will continue to monitor the steelhead run, if additional harvest opportunity can be offered without negatively impacting wild steelhead or hatchery broodstock abundance, seasons and harvest rules may be adjusted. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 25, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-05000S Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective September 1, 2017, until further notice, the following rules apply: Unless otherwise amended, all permanent rules remain in effect.

(1) Grande Ronde River - from the County Road Bridge (about 2.5 miles upstream from the mouth) to the Oregon State line.

(a) Daily limit of one hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

(c) It is unlawful to fish for or possess steelhead in those waters of all tributaries of the Grand Ronde River.

(2) Snake River - from the mouth of the river (Burbank to Pasco railroad bridge at Snake River mile 1.25) to the Idaho/Oregon State line (seven miles upstream of the mouth of the Grande Ronde River).

(a) Catch and release only for steelhead.

(3) Touchet River - from the mouth to the confluence of the North and South Fork Touchet Rivers.

(a) Daily limit of one hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

(c) It is unlawful to fish for or possess steelhead in those waters of all tributaries of the Touchet River.

(4) Tucannon River - from the mouth to the Tucannon Hatchery Road Bridge.

(a) Daily limit of one hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

(5) Walla Walla River - from the mouth to the Oregon State line.

(a) Daily limit of one hatchery steelhead.

(b) Rescinds mandatory hatchery steelhead retention rule.

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 17-18-020

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-217—Filed August 25, 2017, 3:07 p.m., effective August 25, 2017, 3:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial gillnet fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-47-41100A and 220-47-41100B; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to facilitate removal of Atlantic salmon a nonnative species by allowing a smaller mesh size for the commercial gillnet fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7B and 7C. Cooke Aquaculture Pacific, the owner of net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens was caused by extraordinary [extraordinarily] strong tidal currents on August 20, 2017, resulting in the escape of several thousand Atlantic salmon adults. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 25, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-47-41100B Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

| Open Areas | Open Periods | Mesh Size |
|---|--|---------------------------------------|
| 7B, 7C | 7 PM - 8 AM nightly 8/27, 8/28, 8/29, 8/30, 9/3-9/7, 9/10-9/14, and 9/17-9/21 | Minimum 5 inch |
| 9A | 7 AM 8/26 through 11:59 PM 9/22 | Minimum 5 inch |
| 10 - limited participation 5 boats only | 7 PM - 7 AM nightly 8/22, 8/28, 8/30 | Minimum 4.5 inch and maximum 5.5 inch |

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-41100A Gillnet—Open periods. (17-195)

The following section of the Washington Administrative Code is repealed effective September 23, 2017:

WAC 220-47-41100B Gill—Open periods.

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

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 28, 2017.

J. W. Unsworth
Director

**WSR 17-18-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-216—Filed August 28, 2017, 10:24 a.m., effective August 30, 2017]

Effective Date of Rule: August 30, 2017.

Purpose: Amends recreational freshwater fishing rules for the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000R; and amending WAC 220-312-060.

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: Fall Chinook salmon are sedated in a chemical anesthetic, MS-222, during sampling at the Priest Rapids Dam. The United States Food and Drug Administration requires a twenty-one day withdrawal period before human consumption of fish anesthetized in MS-222. Washington department of fish and wildlife staff are applying the 1/4 inch diameter hole, which is punched in the upper lobe of the tail of sampled fish, so that anglers can visually identify fish that must be released. There is insufficient time to adopt permanent rules.

NEW SECTION

WAC 220-312-06000R Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, effective August 30 through October 31, 2017, anglers are required to release chinook salmon with a 1/4 inch diameter (round) hole punched in the upper lobe of the caudal (tail) fin from the Highway 395 Bridge in Pasco to Chief Joseph Dam.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-312-06000R is probably intended to be WAC 220-312-06000R.

REPEALER

This following section of the Washington Administrative Code is repealed effective November 1, 2017:

WAC 220-312-06000R Exceptions to statewide rules—Columbia River.

**WSR 17-18-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-219—Filed August 28, 2017, 5:06 p.m., effective August 28, 2017, 5:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial salmon fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-47-50100B.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A targeting the United States share of Fraser River pink salmon. A portion of Area 7 is open to facilitate removal of Atlantic salmon, a nonnative species. Cooke Aquaculture Pacific, the owner of net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens resulted in the escape of Atlantic salmon adults. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 28, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-50100B Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of WAC Chapters 220-47 and 220-354, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size,

areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Areas 7 and 7A:

Purse Seines - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed below:

| Hours | Dates |
|-------------------|-----------------|
| 5:00 AM - 9:00 PM | August 29, 2017 |

(a) It is unlawful to retain sockeye, Chinook, coho, chum, and rockfish.

(b) Purse seine are required to brail and fishers must also use a recovery box in compliance with WAC 220-354-100 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) Areas 7 and 7A:

Gill Nets - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed below:

| Hours | Dates |
|--------------------|-----------------|
| 8:00 AM - 11:59 PM | August 29, 2017 |

(a) It is unlawful to retain sockeye and rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) Areas 7 and 7A:

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed below:

| Hours | Dates |
|-------------------|-------------------------------|
| 5:00 AM - 9:00 PM | August 29 and August 30, 2017 |

(a) It is unlawful to retain sockeye, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book in accordance with requirements of WAC 220-47-401.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **Area 7.** Open in that portion of Area 7; From the south tip of Lummi Island at Carter Point westerly to the

northern point of Sinclair Island, to the most north western point of Sinclair Island, then to Towhead Island, from there following 1000' of the western shore of Cypress Island to Strawberry Island then to Fidalgo Head and bounded to the East by the 7/7B line:

Gill Nets - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed below:

| Open Periods |
|---|
| 6:00 PM August 28, 2017 through 6:00 PM September 4, 2017 |

(a) It is unlawful to retain sockeye and rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(5) Area 7. Open in that portion of Area 7; From the south tip of Lummi Island at Carter Point westerly to the northern point of Sinclair Island, to the most north western point of Sinclair Island, then to Towhead Island, from there following 1000' of the western shore of Cypress Island to Strawberry Island then to Fidalgo Head and bounded to the East by the 7/7B line:

Beach Seines - Open to beach seine gear in accordance with WAC 220-354-200 and according to the times, dates, and conditions as prescribed and listed below:

| Open Periods |
|---|
| 6:00 PM August 28, 2017 through 6:00 PM September 4, 2017 |

(a) It is unlawful to retain sockeye, Chinook, coho, chum, and rockfish.

(b) It is unlawful to fish for salmon with beach seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(6) **"Quick Reporting Fisheries"** All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-301-030), are designated as "Quick Reporting Required" pursuant to WAC 220-354-090.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. September 4, 2017:

WAC 220-47-50100B Puget Sound all-citizen commercial salmon fishery—Open periods

**WSR 17-18-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-218—Filed August 29, 2017, 11:23 a.m., effective August 29, 2017, 11:59 p.m.]

Effective Date of Rule: August 29, 2017, 11:59 p.m.

Purpose: Amend commercial shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000J; and amending WAC 220-340-520.

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: The 2017 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 spot shrimp in Catch Areas 23A-W, 23A-C and 23B, as the quota will be reached; and (2) closes the pot fishery season for all shrimp species in Shrimp Management Area 5 and spot shrimp in Catch Areas 23A-S and 23D on September 5, as the quota will be reached. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 29, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-52000K Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 2W, 3 and 5 are open to the harvest of all shrimp species, effective

immediately until further notice, except as provided for in this section:

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

(ii) All waters of Shrimp Management Area 2W and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E, 23A-W, 23A-C, 23B and 25A are closed to the harvest of spot shrimp.

(iii) Effective 11:59 p.m. September 5, 2017, all waters of Catch Areas 23A-S and 23D are closed to the harvest of spot shrimp.

(iv) Effective 11:59 p.m. September 5, 2017, all waters of Shrimp Management Area 5 are closed.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per week from Shrimp Management Area 2W. The non-spot shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately, until 11:59 p.m. September 5, 2017, it is unlawful for the combined total harvest of spot shrimp by a fisher or fisher's alternate operator to exceed 600 pounds per week.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

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

(2) Shrimp trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open.

(d) That portion of Catch Area 21A within SMA 1B is open.

(e) Catch Area 20A is open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. August 29, 2017:

WAC 220-340-52000J Puget Sound shrimp pot and beam trawl fishery—Season. (17-213)

WSR 17-18-036

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-220—Filed August 29, 2017, 4:41 p.m., effective August 29, 2017, 4:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial herring, anchovy and smelt drag seine fishery to allow for retention of Atlantic salmon.

Citation of Rules Affected by this Order: Amending WAC 220-356-050 and 220-356-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020 and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to facilitate removal of Atlantic salmon, a nonnative species. Cooke Aquaculture Pacific, the owner of net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens resulted in the escape of Atlantic salmon adults. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 29, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-356-06000A Puget Sound herring, anchovy and smelt commercial fisheries—Drag seine. Notwithstanding the provisions of WAC 220-356-060, effective immediately until further notice, it is permissible to retain Atlantic salmon while fishing in the commercial Puget Sound herring, anchovy and smelt Drag seine fishery.

NEW SECTION

WAC 220-356-05000A Puget Sound forage fish commercial fisheries—General provisions. Notwithstanding the provisions of WAC 220-356-050 and WAC 220-356-060, effective immediately until further notice, Quick Reporting is in effect for Atlantic salmon retained in the commercial Puget Sound herring, anchovy and smelt Drag seine fishery.

WSR 17-18-040**EMERGENCY RULES****BELLINGHAM TECHNICAL COLLEGE**

[Filed August 30, 2017, 10:32 a.m., effective August 30, 2017, 10:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In response to recent legislation relating to costs associated with responding to public records request[s], sections of chapter 495B-276 WAC will need to be amended to be in compliance of state mandates by July 23.

Citation of Rules Affected by this Order: Amending WAC 495B-276-090.

Statutory Authority for Adoption: RCW 28B.50.130.

Other Authority: EHB 1595.

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: Bellingham Technical College finds good cause that new emergency rule WAC 495B-297-090 is necessary for the following reasons. The Public Records Act is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120 (section 3, chapter 304, Laws of 2017) to require that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The college is not calculating actual costs for copying records because to do so would be unduly burdensome.

There is insufficient time under permanent rule-making procedures for the college to bring its copy fees into statutory compliance by July 23, 2017, and as directed by the legislature. The college also finds that it is in the general welfare and the public interest, and benefits requesters and the agency, to adopt the emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. Therefore, emergency rule making is necessary. The college intends to proceed with permanent rule making on these subjects in the near future.

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;

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 30, 2017.

Ronda Laughlin
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-276-090 ((Copying)) Charges for public records. ~~(No fee shall be charged for the inspection of public records. The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records and such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate district official.)~~ (1) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records.

(2) Instead of calculating the actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b).

(3) The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.

(4) The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

All charges must be paid by money order, cashier's check, or cash in advance.

WSR 17-18-041
EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed August 30, 2017, 10:35 a.m., effective August 30, 2017, 10:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The Public Records Act is chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2013 [2017] (section 3, chapter 304, Laws of 2017) requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies) the agency must have a rule declaring the reason that it is not calculating actual cost [costs] because to do so would be unduly burdensome. The new emergency rule, WAC 44-06-092 makes those findings. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. WAC 44-06-092 also provides for fee waivers.

Purpose: The purpose of the rule is to implement the new Public Records Act requirement and provide the necessary findings so the public disclosure commission may begin using the amended statutory default fee schedule effective on July 23, 2017, and waive copy fees under listed circumstances effective July 23, 2017. The additional purpose of the rule is to explain procedures for payment.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120 (as amended by chapter 304, Laws of 2017), 42.17A.110(1).

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 2017 legislature amended RCW 42.56.120 (section 3, chapter 304, Laws of 2017) to require that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in WAC 44-06-092. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 44-06-092 describes the circumstances under which the office will waive copy fees. There is insufficient time under permanent rule-making procedures for the office to bring its copy fees into statutory compliance by July 23, 2017, and as directed by the legislature. The office also finds that it is in the general welfare and the public interest, benefits requestors and the agency to adopt the emergency rule to preserve and update fees in accordance with the legislatively adopted schedule, and allow for fee waivers.

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 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 24, 2017.

B. G. Sandahl
 Deputy Director

[AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)]

WAC 390-14-030 What are the charges for inspecting or copying public records? (1) The commission does not charge a fee for the inspection of public records made available in the commission office or on the commission web site.

(2) The commission does not charge a fee for locating public records and making them available to you for copying.

~~((3) The commission may charge a published fee for copying records, if you order copies. The commission's schedule of charges for copies is published on the commission's web site at www.pdc.wa.gov and is available by contacting the public records officer. The executive director may revise the schedule periodically as needed.))~~

(3) a.) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120.

b. Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: funds were not allocated by the legislature for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(4) Before beginning to make copies, the public records officer may require you to deposit up to ten percent of the estimated costs of copying and ~~((mailing all))~~ transmitting the records ~~((selected by you))~~ responsive to your request. The public records officer may also require you to pay the remainder of the copying costs before providing you all the records, or require you to pay the costs of ~~((copying))~~ providing an installment of records before providing you that installment. If you do not retrieve or pay for an installment of records within the time frame set by the public records officer, the balance of the request will not be fulfilled and your request will be closed.

~~((5) If it is reasonable and feasible to do so, the commission may provide copies of records electronically. See WAC~~

~~390-14-028. Charges for electronic records, if any, are provided in the commission's schedule. Electronic disclosure of records includes providing them on the commission's web site:))~~

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

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 17-18-044
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 30, 2017, 1:58 p.m., effective August 30, 2017, 1:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is creating new sections in chapter 388-106 WAC, Long-term care services, for two new benefit packages for medicaid alternative care and tailored supports for older adults as part of Washington's medicaid transformation demonstration.

Citation of Rules Affected by this Order: New WAC 388-106-1900, 388-106-1905, 388-106-1910, 388-106-1915, 388-106-1920, 388-106-1925, 388-106-1930, 388-106-1935, 388-106-1940, 388-106-1945, 388-106-1950, 388-106-1955, 388-106-1960, 388-106-1965, 388-106-1970, 388-106-1975, 388-106-1980, 388-106-1985, and 388-106-1990.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The department held a public hearing on June 27, 2017, and is reviewing its permanent filing actions.

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 19, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 19, Amended 0, Repealed 0.

Date Adopted: August 29, 2017.

Katherine I. Vasquez
Rules Coordinator

MAC AND TSOA SERVICES

NEW SECTION

WAC 388-106-1900 What definitions apply to MAC and TSOA services? The following definitions apply to MAC and TSOA services:

"**Care plan**" means the plan developed by the department in TCARE or GetCare that summarizes the services described in WAC 388-106-1915 that you chose to receive.

"**Care receiver**" means an adult age fifty-five and over who has been authorized for MAC or TSOA services.

"**Caregiver**" means a spouse, relative, or friend (age eighteen and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services they provide.

"**Caregiver assistance services**" are services that take the place of those typically performed by an unpaid caregiver in support of unmet needs the care receiver has for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

"**GetCare**" means a statewide web-based information system that includes a client management component for use by area agencies on aging (AAA) and other aging and disability network partners.

"**GetCare assessment**" is a process where the department gathers information for an individual without a caregiver in the following areas: functional needs, diagnoses and conditions, behavior health supports, oral health, and nutritional health to assist the individual with choosing step three services.

"**GetCare screening**" is a process where the department gathers information for an individual without a caregiver in order to determine risk scores. The information covers the following areas: function needs, fall risk, availability of informal help, memory and decision making issues, and emotional well-being. The risk scores are used to determine if the individual is referred for a full GetCare assessment.

"**Health maintenance and therapies**" are clinical or therapeutic services that assist the care receiver to remain in their home or the caregiver to remain in their caregiving role and provide high quality care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

"**Identity discrepancy**" means a negative psychological state that occurs when the activities and responsibilities that a caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

"**MAC**" means medicaid alternative care, which is a federally funded program authorized under section 1115 of the Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as their own home or a family member's home) and chooses to receive community based services.

"**Medicaid transformation project demonstration**" refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This

waiver is a five year demonstration to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

"**Personal assistance services**" are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that they are unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

"**RDAD**" means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory problems to complete activities of daily living while also helping family members provide assistance to the person.

"**Service provider**" means an agency or organization contracted with the department.

"**Specialized medical equipment and supplies**" are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

"**TCARE**" means tailored caregiver assessment and referral which is an evidence-based caregiver coordination process designed to assist department assessors who work with family caregivers to support adults living with disabilities. TCARE is designed to tailor services to the unique needs of each caregiver to help reduce stress, depression, and burdens associated with caregiving.

"**TCARE assessment**" is a part of the TCARE process where department assessors gather responses to all of the TCARE screening questions as well as additional questions focused on both the caregiver's experience and the care receiver's situation such as memory issues, behavioral needs, assistance needs with activities of daily living and instrumental activities of daily living, and diagnoses/conditions.

"**TCARE screening**" is a part of the TCARE process that gathers information from the caregiver to determine scores and ranges for the caregiver's identity discrepancy, burdens, uplifts, and depression. The ranges are used to determine if the caregiver is referred for a full TCARE assessment.

"**Training and education**" are services and supports to help caregivers gain skills and knowledge to implement services and supports needed by the care receiver to remain at home and skills needed by the caregiver to remain in their role.

"**TSOA**" means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

(1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and

(2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

NEW SECTION

WAC 388-106-1905 Am I eligible for MAC services?

(1) You are eligible to receive MAC services if you, as a care receiver, meet the following criteria:

- (a) Are age fifty-five or older;
- (b) Meet nursing facility level of care as defined in WAC 388-106-0355;
- (c) Meet medicaid financial eligibility requirements as defined in WAC 182-513-1605;
- (d) Have an unpaid caregiver who:
 - (i) Is age eighteen or older;
 - (ii) Has participated in the following:
 - (A) Care plan for step one services;
 - (B) TCARE screening and care plan for step two services; or
 - (C) TCARE assessment and care plan for step three services;
- (e) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and
- (f) Do not receive any other medicaid funded long-term services and supports (LTSS) while receiving MAC services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends the last day of the month following the month when your MAC services were first authorized.

(b) In the event the department implements a wait list under WAC 388-106-1970 for MAC services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

(d) Under presumptive eligibility you may receive services as described in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1910 Am I eligible for TSOA services?

(1) You are eligible to receive TSOA services if you, as a care receiver, meet the following criteria:

- (a) Are age fifty-five or older;
- (b) Meet nursing facility level of care as defined in WAC 388-106-0355;
- (c) Meet financial eligibility requirements defined in WAC 182-513-1615 or 182-513-1620;
- (d) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and
- (e) Meet the criteria in either (e)(i) or (ii) of this subsection:
 - (i) Have an unpaid caregiver who is age eighteen or older and has participated in the following:
 - (A) A care plan for step one services;
 - (B) A TCARE screening and care plan for step two services; or
 - (C) A TCARE assessment and care plan for step three services; or
 - (ii) You do not have an available caregiver and have participated in the following:
 - (A) A care plan for step one services;

(B) A GetCare screening and care plan for step two services; or

(C) A GetCare assessment and care plan for step three services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The day the decision was made on your TSOA application; or

(ii) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your TSOA application.

(b) In the event the department implements a wait list under WAC 388-106-1970 for TSOA services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

(d) Under presumptive eligibility you may receive services as described in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1915 What services may I receive in MAC and TSOA? MAC and TSOA services include the following three benefit levels referred to as steps. Caregivers and care receivers may receive services under any of the three steps depending upon their requests and needs identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, an individual may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

(a) Information and referrals to family caregiver or community resources;

(b) A selection of the following services up to a one time limit of two hundred and fifty dollars:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment;

(C) Assistive technology;

(iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and

(iv) Health maintenance and therapy supports, which may include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services; and

(D) Counseling related to caregiving role.

(2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screening, you may receive the following:

(a) Information and referrals to family caregiver or community resources;

(b) The following services up to an annual limit of five hundred dollars minus any expenditures for step one services:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment;

(C) Assistive technology; and

(D) Personal emergency response system (PERS);

(iii) Caregiver assistance services, which include but are not limited to:

(A) Short-term respite to allow the caregiver to attend an educational event or training series;

(B) Housework/errands and yard work;

(C) Home delivered meals for the care receiver;

(D) Minor home modifications and repairs to the care receiver's home;

(E) Home safety evaluation of the care receiver's home; and

(F) Transportation, only in conjunction with the delivery of a service;

(iv) Health maintenance and therapy supports, which include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services; and

(D) Counseling related to the caregiving role;

(v) Personal assistance services for the TSOA without an unpaid caregiver, which include but are not limited to:

(A) Adult day care;

(B) Transportation, only in conjunction with the delivery of a service;

(C) Housework/errands and yard work;

(D) Home delivered meals;

(E) Home safety evaluation of the care receiver's home; and

(F) Minor home modifications and repairs to the care receiver's home.

(3) Step three:

(a) For MAC and TSOA care receivers with caregivers:

(i) You may receive information and referrals to family caregiver or community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, the caregiver must complete a TCARE assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screening must result in at least three medium scores

or one high score for the TCARE burdens. TCARE uses an evidence-based algorithm to identify a primary goal based on the caregiver's answers to the TCARE assessment questions. An individualized care plan will be developed that uses the strategies and services recommended by the TCARE assessment and contains the services chosen by the caregiver up to the limits established in WAC 388-106-1920.

(iii) The Xs in the table below indicate the services that may be available for each strategy as defined in WAC 388-106-1930 and recommended by the TCARE assessment:

| Services | Strategies | | | | |
|--|------------|---|---|---|---|
| | A | B | C | D | E |
| <i>Training and education</i> | | | | | |
| Group training | | X | | | |
| Caregiver coping and skill building training | X | X | X | X | |
| Consultation on supported decision making | X | X | X | | |
| Caregiver training to meet needs of care receiver | X | X | X | | |
| Financial or legal consultation | | X | | | |
| Health and wellness consultation | | X | | | |
| Support groups | X | X | X | | |
| <i>Specialized medical equipment and supplies</i> | | | | | |
| Supplies | | X | | | |
| Specialized medical equipment | | X | | | |
| Assistive technology | | X | | | |
| Personal emergency response system | | X | | | |
| <i>Caregiver assistance services</i> | | | | | |
| Home delivered meals | | X | | | |
| Minor home modifications and repairs | | X | | | |
| Housework/errands and yard work | | X | | | |
| In-home respite | | X | | | |
| OT/PT evaluation | X | X | | X | |
| Home safety evaluation | | X | | | |
| Out-of-home respite | | X | | | |
| Transportation | | X | | | |
| <i>Health maintenance and therapy supports</i> | | | | | |
| Adult day health | | X | | | |
| RDAD and evidence based exercise programs | | X | | X | |
| Health promotion and wellness services | | | | X | X |
| Counseling related to the caregiver role | X | | X | X | |

(b) For TSOA care receivers who do not have an available caregiver:

(i) You may receive information and referrals to community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a GetCare assessment, the Get-

Care screening must result in a risk score of moderate or high. An individualized care plan will then be developed based upon the needs identified in the assessment and the services you have selected up to the limits established in WAC 388-106-1920.

(iii) The services available include services noted in subsections (1) and (2) of this section (except for subsections

(1)(b)(iii) and (2)(b)(iii) of this section) and the following personal assistance services:

- (A) Personal care; and
- (B) Nurse delegation.

NEW SECTION

WAC 388-106-1920 What is the maximum amount of step three services I may receive a month? (1) The maximum amount of step three services you and your caregiver may receive in MAC and TSOA is an average of five hundred and fifty dollars per month not to exceed three thousand three hundred dollars in a six month period unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

(2) If you are a care receiver who does not have an available unpaid caregiver and you are receiving TSOA personal assistance services, the maximum amount of step three services you may receive per month is five hundred and fifty dollars unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

NEW SECTION

WAC 388-106-1925 What are the goals in TCARE? The three primary goals for caregivers identified in TCARE are:

(1) Maintain current identity: The goal appropriate for caregivers who experience modest levels of identity discrepancy and stress and are willing and able to continue in their current role. Suggested support services will help caregivers make small adjustments in their personal norms and the manner in which they undertake their caregiving responsibilities.

(2) Embrace caregiver identity: The goal appropriate for caregivers who are likely to benefit from embracing a stronger identity as a caregiver and releasing, to some degree, their commitment to a familial identity. Suggested support services will encourage the caregiver to accept a greater identity with the caregiver role.

(3) Reduce caregiver identity: The goal appropriate for caregivers who are engaged in a level of caregiving that requires emotional or physical resources beyond their capability. Suggested support services will encourage caregivers to explore ways to reduce workload and stress related to their caregiving role.

NEW SECTION

WAC 388-106-1930 What is the purpose of the TCARE assessment? The purpose of the TCARE assessment is to gather critical information about the caregiving context, identity, strengths, problems and concerns. This data is used to identify strategies and goals to address the caregiver's burdens and stresses. Program limits are established in WAC 388-106-1915.

The five strategies in TCARE are:

(1) Strategy A: Change personal rules for care, which entails encouraging and helping the caregiver to change or adjust their personal rules or norms.

(2) Strategy B: Reduce or minimize work load, which focuses on reducing the amount or intensity of a caregiver's

work load and therefore aligns the caregiver's behaviors with their expectations.

(3) Strategy C: Support positive self-appraisal, which focuses on offering positive affirmation and assuring the caregiver that the behaviors that they must engage in as a caregiver are consistent with their norms.

(4) Strategy D: Reduce generalized stress, which focuses on giving the caregiver tools and skills to cope with daily stresses of caregiving.

(5) Strategy E: Improve overall health, which encourages the caregiver to seek appropriate health services.

NEW SECTION

WAC 388-106-1935 Where may I receive MAC and TSOA services? You may receive MAC and TSOA services:

(1) In your own home; and

(2) In the community setting, where the authorized service occurs, within the state of Washington or in a recognized out-of-state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-1940 When will my MAC or TSOA services be authorized? Your MAC or TSOA services will be authorized when you:

(1) Have completed initial requirements for intake including but not limited to screenings and assessments;

(2) Are found to be at least presumptively eligible, both financially and functionally;

(3) Have chosen a provider(s) qualified for payment; and

(4) Have given consent for services and approved your care plan.

NEW SECTION

WAC 388-106-1945 When do my MAC or TSOA services begin? Your MAC or TSOA services may begin as early as the date authorized by the department.

NEW SECTION

WAC 388-106-1950 How do I remain eligible for MAC and TSOA services? (1) In order to remain eligible for MAC and TSOA services, you, as the care receiver must:

(a) Remain functionally eligible as defined in WAC 388-106-0355 and financially eligible as defined in WAC 182-513-1605, 182-513-1615, and 182-513-1620; and

(b) Have your functional and financial eligibility reviewed at least annually.

(2) If eligibility laws, regulations, or rules change, and if you as the caregiver or the care receiver do not meet the changed eligibility requirements, the department will terminate services, even if your circumstances have not changed. You will receive advance notice of any termination or change in your services and an opportunity to appeal.

NEW SECTION

WAC 388-106-1955 What do I pay for if I receive MAC or TSOA services? You, as a caregiver or a care

receiver, will not be required to pay toward the cost of your MAC or TSOA services. This means that neither estate recovery nor participation towards cost of care are required.

NEW SECTION

WAC 388-106-1960 May I be employed and receive MAC or TSOA services? You, as the care receiver may be employed and receive MAC or TSOA services. Your caregiver may be employed in roles other than caregiving and receive services under MAC or TSOA.

NEW SECTION

WAC 388-106-1965 Are there limits to the services I may receive? The services you may receive under MAC or TSOA will not include the following:

- (1) Rent;
- (2) Groceries;
- (3) Car repairs;
- (4) Utility bills;
- (5) Household appliances;
- (6) Vacation expenses;
- (7) Entertainment items such as TVs, radios, computers, cell phones;
- (8) Pet care items;
- (9) Gift cards; and
- (10) Any services not defined in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1970 Who may provide MAC and TSOA services? The following providers may provide MAC and TSOA services:

- (1) Durable medical equipment vendors and adult day health providers that have a core provider agreement with the health care authority; and
- (2) Providers who are contracted with the department to provide goods and services.

NEW SECTION

WAC 388-106-1975 Will there be a wait list for MAC and TSOA? (1) The department will implement a statewide wait list if program expenditures or enrollment exceeds availability of demonstration funding.

(2) If the department implements a wait list for new MAC and TSOA applicants:

- (a) We will stop conducting presumptive eligibility determinations and financial and functional eligibility assessments.
- (b) We may reduce benefit limits for step one, two, and three to maintain department spending within available demonstration funding. If we reduce benefit limits, individuals currently receiving benefits will maintain their current benefit level, including those with approved presumptive eligibility.
- (c) If additional funding becomes available, applicants on a wait list for MAC or TSOA services will be considered on a first come first serve basis based upon their request date for MAC or TSOA services.

NEW SECTION

WAC 388-106-1980 When may the department terminate or deny MAC or TSOA services? (1) The department will deny or terminate MAC or TSOA services if you are not eligible for services pursuant to WAC 388-106-1905, 388-106-1910, and 388-106-1945.

(2) The department may deny or terminate your MAC or TSOA services if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, one or more of the following conditions exist:

(a) Your rights and responsibilities as a client of the department are reviewed with you by a department representative under WAC 388-106-1300 and 388-106-1303, and you refuse to accept those services identified in your care plan that are vital to your health, welfare, or safety.

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider.

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (such as dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (such as exposed sewage, evidence of a methamphetamine lab).

(3) The department will terminate services if the department does not receive written consent of the care plan within sixty days of the completion of your care plan. Written consent for step one and step two care plans may also be provided by secure email or other electronic means.

NEW SECTION

WAC 388-106-1985 Do I have the right to an administrative hearing regarding MAC or TSOA services? Yes, you may request an administrative hearing based on the rules outlined in WAC 388-106-1305 to contest the department's decisions regarding MAC or TSOA services.

NEW SECTION

WAC 388-106-1990 May I choose to receive traditional medicaid long term services and supports instead of services under the MAC program? Yes. You, as the care receiver, may choose to apply for traditional medicaid long term services and supports such as community first choice, community option program entry system (COPES), new freedom, and residential support waiver, instead of services under the MAC program. You must contact your case manager who will assist you with this process.

WSR 17-18-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-221—Filed August 31, 2017, 10:12 a.m., effective September 1, 2017]

Effective Date of Rule: September 1, 2017.

Purpose: Amends rules for freshwater areas in southwest region and eastside.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000D, 220-312-05000K, 220-312-03000G and 220-312-05000T; and amending WAC 220-312-030 and 220-312-050.

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: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. This emergency rule is interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 4.

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

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

Date Adopted: August 31, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-312-03000G Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective September 1 through September 7, 2017, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Cowlitz River from boundary markers at the mouth upstream to the Lexington Drive Bridge/Sparks Road Bridge (Lewis Co.):**

(a) Night closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing

for Pikeminnow, effective immediately through September 7, 2017.

(b) Through September 7, only 1 hatchery steelhead may be retained.

(2) **Drano Lake in the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge:**

(a) Night closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for Pikeminnow, effective immediately through September 7, 2017.

(b) Effective September 1 through September 7, release all steelhead.

(3) **Lewis River from the mouth upstream to the mouth of the East Fork Lewis River (Clark Co.):**

(a) Night closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for Pikeminnow, effective immediately through September 7, 2017.

(b) September 1 through September 7, only 1 hatchery steelhead may be retained.

(4) **Wind River (Skamania Co.) from the mouth upstream to 400 feet below Shipherd Falls**

(a) Night closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow, effective immediately through September 7, 2017.

(b) September 1 through September 7, only 1 hatchery steelhead may be retained.

NEW SECTION

WAC 220-312-05000T Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective September 1 through September 7, 2017, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

White Salmon River from the mouth upstream to the county road bridge below the former location of the powerhouse (Klickitat/Skamania Counties):

(a) Night closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow, effective immediately through September 7, 2017.

(b) September 1 through September 7, only 1 hatchery steelhead may be retained.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-312-03000D Freshwater exceptions to statewide rules—Southwest (17-107)

WAC 220-312-05000K Freshwater exceptions to statewide rules—Eastside (17-107)

The following sections of the Washington Administrative Code are repealed effective September 8, 2017:

WAC 220-312-03000G Freshwater exceptions to state rules—Southwest.

WAC 220-312-05000T Freshwater exceptions to statewide rules—Eastside.

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 17-18-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-222—Filed August 31, 2017, 10:13 a.m., effective September 1, 2017]

Effective Date of Rule: September 1, 2017.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000P and 220-312-06000S; and amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. This emergency rule is interim until permanent rules take effect.

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 1, Amended 0, Repealed 2.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 31, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Mainstem Columbia River from a true north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank,**

(a) Night angling closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow effective immediately through September 7, 2017.

(b) Open for Chinook retention through September 4:

(2) **Mainstem Columbia River from the line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to The Dalles Dam,** effective immediately through September 7:

(a) Night angling closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow through September 7.

(3) **Mainstem Columbia River from The Dalles Dam upstream to the Hwy. 395 Bridge in Pasco:** effective immediately until further notice:

(a) Night angling closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow through September 7.

(b) September 1 through September 7, release all steelhead.

(c) From the WA/OR border upstream to the Hwy. 395 Bridge in Pasco, each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

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 September 1, 2017:

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia River (17-155)

The following section of the Washington Administrative Code is repealed effective September 8, 2017:

WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia River.

WSR 17-18-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-224—Filed August 31, 2017, 10:14 a.m., effective September 1, 2017]

Effective Date of Rule: September 1, 2017.

Purpose: Amends recreational harvest rules for hardshell clams and oysters.

Citation of Rules Affected by this Order: Repealing WAC 220-330-11000A and 220-330-14000A; and amending WAC 220-330-110 and 220-330-140.

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: Recent clam survey data, sport harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries, along with public health considerations and administrative tasks, call for recreational clam and oyster seasons to be extended or shortened on some public beaches. The department of fish and wildlife is in the process of adopting permanent rules. These rules are interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 31, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-330-11000B Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-110, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Fort Flagler State Park: Open until further notice

- (2) Indian Island County Park/Lagoon Beach: Open through September 30, 2017

- (2) Port Gamble Heritage Park Tidelands: Open until further notice.

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

NEW SECTION

WAC 220-330-14000B Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-330-140, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Fort Flagler State Park: Open until further notice
- (2) Indian Island County Park/Lagoon Beach: Open through September 30, 2017
- (2) Port Gamble Heritage Park Tidelands: Open until further notice.

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 sections of the Washington Administrative Code are repealed effective September 1, 2017:

WAC 220-330-11000A Clams other than razor clams—
 Areas and seasons. (17-117)

WAC 220-330-14000A Oysters—Areas and seasons. (17-
 117)

WSR 17-18-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-225—Filed August 31, 2017, 4:35 p.m., effective September 1, 2017, 5:00 a.m.]

Effective Date of Rule: September 1, 2017, 5:00 a.m.

Purpose: Amends Puget Sound commercial salmon fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-47-50100B and 220-47-50100C.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A targeting the United States share of Fraser River pink

salmon in conjunction with target removal of Atlantic salmon, a nonnative species. Cooke Aquaculture Pacific, the owner of net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens resulted in the escape of Atlantic salmon adults. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: August 31, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-47-50100C Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of WAC Chapters 220-47 and 220-354, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Areas 7 and 7A:

Purse Seines - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed below:

| Hours | Dates |
|-------------------|-------------------|
| 5:00 AM - 9:00 PM | September 1, 2017 |
| 5:00 AM - 9:00 PM | September 2, 2017 |
| 5:00 AM - 9:00 PM | September 3, 2017 |
| 5:00 AM - 9:00 PM | September 4, 2017 |
| 5:00 AM - 9:00 PM | September 5, 2017 |

(a) It is unlawful to retain sockeye, Chinook, coho, chum, and rockfish.

(b) Purse seine are required to brail and fishers must also use a recovery box in compliance with WAC 220-354-100 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next

brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) Areas 7 and 7A:

Gill Nets - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed below:

| Hours | Dates |
|--------------------|-------------------|
| 8:05 AM - 11:59 PM | September 1, 2017 |
| 8:05 AM - 11:59 PM | September 2, 2017 |
| 8:05 AM - 11:59 PM | September 3, 2017 |
| 8:05 AM - 11:59 PM | September 4, 2017 |
| 8:05 AM - 11:59 PM | September 5, 2017 |

(a) It is unlawful to retain sockeye and rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) Areas 7/7A:

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed below:

| Hours | Dates |
|-------------------|-------------------|
| 5:00 AM - 9:00 PM | September 1, 2017 |
| 5:00 AM - 9:00 PM | September 2, 2017 |
| 5:00 AM - 9:00 PM | September 3, 2017 |
| 5:00 AM - 9:00 PM | September 4, 2017 |
| 5:00 AM - 9:00 PM | September 5, 2017 |

(a) It is unlawful to retain sockeye, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book in accordance with requirements of WAC 220-47-401.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **Area 7/7A. Beach Seines** - Open to beach seine gear in accordance with WAC 220-354-200 and according to the times, dates, and conditions as prescribed and listed below:

| Open Periods |
|--|
| 5:00 AM Friday September 1 through 9:00 AM September 5, 2017 |

(a) It is unlawful to retain sockeye, Chinook, coho, chum, and rockfish.

(b) It is unlawful to fish for salmon with beach seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(5) **"Quick Reporting Fisheries"** All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-301-030), are designated as "Quick Reporting Required" pursuant to WAC 220-354-090.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:59 a.m. September 1, 2017:

WAC 220-47-50100B Puget Sound all-citizen commercial salmon fishery—Open periods. (17-219)

The following section of the Washington Administrative Code is repealed effective September 6, 2017:

WAC 220-47-50100C Puget Sound all-citizen commercial salmon fishery—Open periods.

WSR 17-18-061
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed September 1, 2017, 10:43 a.m., effective September 1, 2017, 10:43 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is revising WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements, to align with new credentialing for ABA providers through the Washington state department of health under chapter 246-805 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSB 5488, chapter 118, Laws of 2015, 64th legislature.

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 emergency filing is necessary to align with SSB 5488 of 2015 and Washington state department of health's recently filed rules under chapter 246-805 WAC, which create new credentials for behavior analysts, assistant behavior analysts, and behavior technicians, effective July 1, 2017. As soon as chapter 246-805 WAC became effective, the agency began the permanent rule-making process under WSR 17-11-029 filed May 10, 2017. Although this emergency rule is not yet set to expire, the agency needs to refile the emergency to add licensed marriage and family therapists and licensed advanced social

workers as providers that can fulfill the role of a lead behavior analysis therapist or a certified behavior technician. Under the previous CR-103E filing (WSR 17-14-064), these provider types were unintentionally excluded.

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 the Request of a Non-governmental 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: September 1, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

- (i) An advanced registered nurse practitioner (ARNP);
- (ii) A developmental pediatrician;
- (iii) A neurologist;
- (iv) A pediatric neurologist;
- (v) A pediatric psychiatrist;
- (vi) A psychiatrist; or
- (vii) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section (~~and~~), who has been designated by the agency as a COE, and who has successfully completed the agency's approved COE training.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

- (i) Using a validated diagnostic tool;
- (ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) The COE must be enrolled with the agency or the client's managed care organization, unless the client has third-party insurance.

(5) Examples of providers who can qualify as a designated COE include:

- (a) Multidisciplinary clinics;
- (b) Individual qualified provider offices; and
- (c) Neurodevelopmental centers.

(6) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

(7) The lead behavior analysis therapist (LBAT) must ~~((be))~~:

(a) ~~Be licensed by the department of health (DOH) to practice independently as ((an ARNP, physician, psychologist, or licensed mental health practitioner)) a behavior analyst or assistant behavior analyst with supervision from a licensed behavior analyst under Title 18 RCW((, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW,)) and be an eligible provider according to chapter 182-502 WAC; or~~

(b) ~~((Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW, and be an eligible provider according to chapter 182-502 WAC; or~~

~~(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.)) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or psychologist with a signed attestation regarding certification as a board-certified behavior analyst (BCBA) or an assistant behavior analyst (BCaBA) on file with the agency (see chapter 246-805 WAC).~~

(8) The LBAT must enroll as a servicing provider, be authorized to supervise ancillary providers, and be:

(a) ~~A ((board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB))) DOH-licensed behavior analyst (LBA) (see WAC 246-805-100); or~~

~~(b) ((Eligible to sit for board certification under standards set by the BACB; or~~

~~(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB.)) A DOH-licensed assistant behavior analyst (LABA) (see WAC 246-805-200).~~

(9) If the LBAT's role is filled by a ~~((BCaBA)) LABA~~, the responsibilities below must be fulfilled by both the ~~((BCaBA)) LABA~~ and the supervising ~~((BCBA)) LBA~~, as required by ~~((the BACB)) DOH~~. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the ~~((therapy assistant)) certified behavior technician~~ per week.

~~((Therapy assistant.)) Certified behavior technician.~~

(10) The ~~((therapy assistant (TA))) certified behavior technician (CBT)~~ must ~~((be))~~:

(a) ~~Be able to practice independently by being ((licensed)) certified by DOH as a ((licensed mental health practitioner or credentialed as a counselor)) certified behavior technician under Title 18 RCW in good standing with no license restrictions; or~~

(b) ~~((Employed by or contracted with an agency enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or~~

~~(c) Employed by or contracted with an agency enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.)) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or psychologist with a signed attestation regarding ABA qualifications on file with the agency (see chapter 246-805 WAC).~~

(11) The ~~((TA)) CBT~~ must enroll as a performing or servicing provider and have:

(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a client with core symptoms of autism; and

(b) A letter of attestation signed by the lead LBAT, documenting that the ~~((TA)) CBT~~ has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services.

(12) The ~~((TA)) CBT~~ must:

(a) Deliver services according to the ABA therapy treatment plan; and

(b) Be supervised by an LBAT who meets the requirements under subsection (7)((;)) and (8)((, and (9))) of this section; and

(c) Review the client's progress with the LBAT at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the LBAT.

Facility-based day program.

(13) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following licensure requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements;

~~(b) ((A clinic or nonhospital based facility must be licensed as a community mental health agency by DBHR under chapter 388-877A WAC;~~

~~(e))~~) A provider rendering direct ABA services must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable; and

~~((c))~~ (c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.150.

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

Reasons for this Finding: A recent error with the department's drawing system allowed eighty-nine additional elk hunters to draw a multiseason elk permit. The season for this hunt starts as early as September 9 which leaves the department insufficient time to engage in permanent rule making. The additional permits will have minimal to no impact on current elk population. The department will work toward improvements to the drawing system to avoid this happening in the future.

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 the Request of a Non-governmental 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: August 31, 2017.

J. W. Unsworth
Director

WSR 17-18-063

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-226—Filed September 1, 2017, 11:36 a.m., effective September 1, 2017, 11:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To increase the number of multiseason elk permits in WAC 220-412-090 by eighty-nine permits to align with the number that was mistakenly drawn through the WILD system.

Citation of Rules Affected by this Order: Amending WAC 220-412-090.

NEW SECTION

WAC 220-412-09000A Multiple season big game permits. (1) Notwithstanding the provisions of WAC 220-412-090, effective immediately, until further notice, the change shall read as follows:

Multiple Season Elk Permits

| | | | | |
|------|--|---|---|-------------------------|
| 1089 | Sept. 1 - December 31 within general seasons and regulations established by the commission for elk | Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters | Any legal elk consistent with the game management unit or area restrictions | Any licensed elk hunter |
|------|--|---|---|-------------------------|

WSR 17-18-064

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-228—Filed September 1, 2017, 12:55 p.m., effective September 1, 2017, 12:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for the Puget Sound smelt commercial fishery—Weekly periods.

Citation of Rules Affected by this Order: Amending WAC 220-356-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: This emergency rule is needed to facilitate removal of Atlantic salmon, a nonnative species. Cooke Aquaculture Pacific, the owner of net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens resulted in the escape of Atlantic salmon adults. 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 the Request of a Non-governmental 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: September 1, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-356-20000A Puget Sound smelt commercial fishery—Weekly periods. Notwithstanding the provisions of WAC 220-356-200, effective immediately until further notice, it is permissible to fish for smelt for commercial purposes in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Area 22A seven days per week.

WSR 17-18-066 EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 1, 2017, 2:16 p.m., effective September 1, 2017, 2:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending and repealing existing sections and creating new sections [in] chapter 388-845 WAC as part of the developmental disabilities administration's (DDA) waiver renewal process. These emergency rules reflect the changes approved by the Centers for Medicare and Medicaid Services (CMS) in August 2017.

Citation of Rules Affected by this Order: New WAC 388-845-0515, 388-845-0520 and 388-845-0525; repealing

WAC 388-845-1200, 388-845-1205, 388-845-1210, 388-845-1840, 388-845-1845 and 388-845-1850; and amending WAC 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0501, 388-845-0505, 388-845-0506, 388-845-0510, 388-845-0700, 388-845-0820, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1150, 388-845-1650, 388-845-1655, 388-845-1660, 388-845-1700, 388-845-1710, 388-845-1865, 388-845-1900, 388-845-2010, and 388-845-2170.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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: DDA must not authorize waiver services unless they are part of a waiver application approved by CMS. CMS has approved DDA's waiver applications. These emergency rules are necessary for DDA to provide the services approved by CMS, and for DDA to receive federal funding.

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 27, Repealed 6.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 27, Repealed 6.

Date Adopted: September 1, 2017.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-19 issue of the Register.

WSR 17-18-069 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-232—Filed September 1, 2017, 4:09 p.m., effective September 1, 2017, 4:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules in the Hump-tulps River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000I; and amending WAC 220-312-020.

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

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

Number of Sections Adopted at the Request of a Non-governmental 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: September 1, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-0200K Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Bear Creek (Clallam County) (Bogachiel tributary): Open September 1, 2017 until further notice.

(2) Bear Creek (Clallam County) (Sol Duc tributary): Open September 1, 2017 until further notice.

(3) Beaver Creek (Clallam County) (Sol Duc River tributary), from mouth upstream to Beaver Falls: Open September 1, 2017 until further notice.

(4) Bogachiel River (Clallam County), from mouth to Hwy. 101 bridge: Open September 1, 2017 until further notice

(5) Bogachiel River (Clallam County); from Highway 101 Bridge to Olympic National Park boundary: Open September 1, 2017 until further notice.

(6) Calawah River (Clallam County), from mouth to Hwy. 101 bridge:

(a) Open September 1, 2017 until further notice.

(b) Salmon: Open September 1, 2017 until further notice; daily limit 3, only 1 adult may be retained.

(7) Calawah River (Clallam County), from Hwy. 101 bridge to forks: Open September 1, 2017 until further notice.

(8) Calawah River North Fork (Clallam County): Open September 1, 2017 until further notice.

(9) Calawah River, South Fork (Clallam County), from mouth to Olympic National Park boundary: Open September 1, 2017 until further notice.

(10) Clearwater River (Jefferson County), from mouth to Snahapish River:

(a) Open September 1 through September 30, 2017.

(b) Salmon: Open September 1 through September 30, 2017 minimum size 12"; daily limit 3, only 1 adult may be retained, release wild coho.

(11) Clearwater River (Jefferson County), from Snahapish River upstream: Open September 1 through September 30, 2017.

(12) Dickey River (Clallam County), from Olympic National Park boundary upstream to the confluence of the East and West forks:

(a) Open September 1, 2017 until further notice.

(b) Salmon: Open September 1 until further notice; minimum size 12"; daily limit 3, only 1 adult may be retained.

(13) Dickey River (Clallam County), from the confluence of the East and West forks upstream (for both forks): Open September 1, 2017 until further notice.

(14) Hoh River (Jefferson County), from Olympic National Park boundary upstream to Dept. Natural Resources' Oxbow Campground boat launch:

(a) September 1 through September 15, 2017: closed to fishing.

(b) Open September 16 until further notice.

(c) Salmon: Open September 16 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which only 1 may be a Chinook.

(15) Hoh River (Jefferson County), from Dept. Natural Resources' Oxbow Campground boat launch to Morgan's Crossing boat launch:

(a) Bait prohibited except from October 16 until further notice.

(b) September 1 through September 15, 2017: closed to fishing.

(c) Open September 16, 2017 until further notice.

(d) Salmon: Open October 16, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which only 1 may be a Chinook.

(16) Hoh River (Jefferson County), from Morgan's Crossing boat launch upstream to Olympic National Park boundary: September 1 through September 15, 2017: closed to fishing.

(17) Hoh River, South Fork (Jefferson County): September 1 through September 15, 2017: closed to fishing.

(18) Matheny Creek (Jefferson County) (Queets River tributary), outside Olympic National Park: Open September 1 through September 30, 2017.

(19) Quillayute River (Clallam County), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel Rivers:

(a) Open September 1, 2017 until further notice.

(b) Trout: Minimum size 14"; no minimum size for hatchery trout. Release wild rainbow trout.

(c) Salmon: Open September 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 3 adults may be retained of which only 1 may be wild.

(20) Salmon River (Jefferson County), outside Quinault Indian Reservation and Olympic National Park:

(a) Open September 1 through September 30, 2017

(b) Salmon: Open September 1, 2017; minimum size 12"; daily limit 6, up to 2 adults may be retained, of which only 1 may be a Chinook. Release wild coho.

(21) Sitkum River (Clallam County) (Calawah River tributary): Open September 1, 2017 until further notice.

(22) Snahapish River (Jefferson County) (Clearwater River tributary): Open September 1 through September 30, 2017.

(23) Sol Duc River (Clallam County), from mouth to concrete pump station at Sol Duc Hatchery:

(a) Open September 1, 2017 until further notice.

(b) Salmon: Open September 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 3 adults may be retained of which only 1 may be wild.

(24) Sol Duc River (Clallam County), from the concrete pump station at Sol Duc Hatchery to the Highway 101 Bridge upstream of Klahowya campground: Open September 1, 2017 until further notice.

(25) Sol Duc River (Clallam County), from Highway 101 Bridge upstream of Klahowya campground to Olympic National Park boundary: Open September 1, 2017 until further notice.

(26) Solleks River (Jefferson County): Open September 1 through September 30, 2017.

(27) Thunder Creek (Clallam County), from mouth to D2400 road: September 1, 2017 until further notice.

(28) Thunder Creek (Clallam County), from D2400 road upstream: Open September 1, 2017 until further notice.

(29) Black River (Grays Harbor/Thurston Counties), from Highway 12 to bridge on 128th Ave. SW (west of Littlelock): Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook and chum.

(30) Chehalis River (Grays Harbor County), from mouth (Hwy. 101 Bridge in Aberdeen) upstream to South Elma Bridge (Wakefield Rd.) to Porter Boat Launch including all channels, sloughs, and interconnected waterways:

(a) Salmon: Open immediately through September 15, 2017; minimum size 12"; daily limit 6. Release adults.

(b) Salmon: Open September 16, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release adult Chinook.

(31) Chehalis River (Grays Harbor County), from South Elma Bridge (Wakefield Rd.) to Porter Boat Launch including all channels, sloughs, and interconnected waterways: Salmon: Closed immediately through September 15, 2017.

(32) Chehalis River (Grays Harbor County), from South Elma Bridge (Wakefield Rd.) to Black River including all channels, sloughs and interconnected waterways: Salmon: Open September 16, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release Chinook.

(33) Chehalis River (Grays Harbor County), from Black River upstream to high bridge on Weyerhaeuser 1000 line approx. 400 yards downstream of Roger Creek (south of Pe Ell): Salmon: Open September 16, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook and chum.

(34) Elk River (Grays Harbor County), from mouth (Hwy. 105 Bridge) to the confluence of the Middle Branch: Salmon: Open October 1, 2017 until further notice. Minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release adult Chinook.

(35) Hoquiam River, including West Fork (Grays Harbor County), from mouth (Hwy. 101 Bridge on Simpson Ave.) to Dekay Rd. Bridge (West Fork): Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook.

(36) Hoquiam River, East Fork (Grays Harbor County), from mouth to confluence of Berryman Creek: Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook.

(37) Humptulips River (Grays Harbor County), from mouth (Jessie Slough to confluence of East and West Forks): Salmon: Open September 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained. Release wild coho and wild Chinook.

(38) Joe Creek (Grays Harbor County), from mouth to Ocean Beach Rd. Bridge: Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release Chinook.

(39) Johns River (Grays Harbor County), from mouth (Hwy. 105 Bridge) to Ballon Creek: Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release adult Chinook.

(40) Moclips River (Grays Harbor County), from mouth to Quinault Indian Reservation boundary: Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release Chinook.

(41) Newaukum River, including South Fork (Lewis County), from mouth to Leonard Rd. near Onalaska: Salmon: Open October 16, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook and chum.

(42) Satsop River and East Fork (Grays Harbor County), from mouth to bridge at Schafer State Park:

(a) Salmon: Closed September 1, 2017 to September 30, 2017.

(b) Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook.

(43) Satsop River and East Fork (Grays Harbor County), from 400' below Bingham Creek Hatchery dam to dam:

(a) Salmon: Closed September 1, 2017 to September 30, 2017.

(b) Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook.

(44) Skookumchuck River (Thurston County), from mouth to 100' below outlet of Trans Alta WDFW steel-head rearing pond located at the base of Skookumchuck Dam:

(a) Salmon: Closed October 1, 2017 to October 15, 2017.

(b) Salmon: Open October 16, 2017 until further notice; minimum size 12"; daily limit 6 of which 1 wild coho and up to 2 adults may be retained. Release Chinook and chum.

(45) Van Winkle Creek (Grays Harbor County), from mouth to 400' below outlet of Lake Aberdeen Hatchery: Salmon: Open September 16, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release adult Chinook.

(46) Wishkah River (Grays Harbor County), from mouth to 200' below the weir at the Wishkah Rearing Ponds: Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release Chinook.

(47) Wynoochee River (Grays Harbor County), from mouth to WDFW White Bridge Access Site: Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 2 adults may be retained of which 1 may be a wild coho. Release Chinook.

(48) Naselle River (Pacific/Wahkiakum counties), from Highway 4 Bridge to the upstream entrance of the Naselle Hatchery Attraction Channel:

(a) immediately through October 15: bait or lure must be suspended below a float.

(b) Salmon: Open immediately through September 15, 2017; minimum size 12"; daily limit 6. Up to 2 adults may be retained. Release wild Chinook.

(c) Salmon: Open September 16, 2017 until further notice; minimum size 12"; daily limit 6. Up to 4 adults may be retained. Release wild Chinook.

(49) North River (Grays Harbor/Pacific counties), from Hwy 105 Bridge to Fall River: Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 4 adults may be retained. Release wild Chinook.

(50) Willapa River (Pacific County), from Hwy 6 Bridge (approximately 2 miles below mouth of Trap Creek) upstream to Fork Creek:

(a) Salmon: Open immediately through September 15, 2017; minimum size 12"; daily limit 6. Up to 2 adults may be retained. Release wild Chinook.

(b) Salmon: Open September 16, 2017 until further notice; minimum size 12"; daily limit 6. Up to 4 adults may be retained. Release wild Chinook.

(51) Willapa River (Pacific County), from Fork Creek upstream to Hwy 6 Bridge (near the town of Lebam): Salmon: Open October 1, 2017 until further notice; minimum size 12"; daily limit 6. Up to 4 adults may be retained of which only 2 may be a wild coho. Release wild Chinook.

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 immediately:

WAC 220-312-02000I Freshwater exceptions to statewide rules—Coast.

WSR 17-18-070 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-231—Filed September 1, 2017, 4:14 p.m., effective September 3, 2017]

Effective Date of Rule: September 3, 2017.

Purpose: Amend Puget Sound commercial salmon gillnet and purse seine seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-47-31100A, 220-47-31100B, 220-47-41100B, and 220-47-41100C; and amending WAC 220-47-411 and 220-47-311.

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: The department has adopted permanent rules necessary to implement the commercial fishing plans developed through the North of Falcon season setting process. These rules are interim until permanent rules take effect. Additionally, this emergency rule is needed to facilitate removal of Atlantic salmon a nonnative species by allowing a smaller mesh size for the commercial gillnet fisheries in Puget Sound Salmon Management and Catch Reporting Area 7C. Cooke Aquaculture Pacific, the owner of net pen facility near Cypress Island, Washington (near the San Juan Islands) has indicated that structural damage to one of their Atlantic salmon net pens resulted in the escape of Atlantic salmon adults. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 4.

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

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

Date Adopted: September 1, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-31100B Purse seine—Open periods.

Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

| Open Areas | Open Periods |
|---|---|
| 7B, 7C | 6 AM - 8 PM - 9/6; 7 AM - 7 PM - 9/11, 9/13, and 9/15 |
| 10 - limited participation 5 boats only | 7 AM - 7 PM daily 9/5 and 9/7 |

Purse seines fishing in Puget Sound Salmon Management and Catch Reporting Areas 7B and 7C must release all sockeye.

NEW SECTION

WAC 220-47-41100C Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

| Open Areas | Open Periods | Mesh Size |
|------------|--|----------------|
| 7B, 7C | 7 AM 9/3 - 7 AM 9/8; 7 AM 9/10 - 7 AM 9/15; | Minimum 5 inch |
| 7B | 7 AM 9/17 - 12:01 AM 9/18; | Minimum 5 inch |

| Open Areas | Open Periods | Mesh Size |
|---|------------------------------------|---------------------------------------|
| 9A | continuously through 12:01 AM 9/18 | Minimum 5 inch |
| 10 - limited participation 5 boats only | 7 PM - 7 AM nightly 9/5 and 9/7 | Minimum 4.5 inch and maximum 5.5 inch |

Gillnets fishing in Puget Sound Salmon Management and Catch Reporting Areas 7B and 7C must release all sockeye.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 PM September 02, 2017:

WAC 220-47-31100A Purse seine—Open periods (17-195)

WAC 220-47-41100B Gillnet—Open periods (17-217)

REPEALER

The following sections of the Washington Administrative Code are repealed effective September 18, 2017:

WAC 220-47-31100B Purse seine—Open periods.

WAC 220-47-41100C Gillnet—Open periods.

**WSR 17-18-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-233—Filed September 3, 2017, 4:48 p.m., effective September 3, 2017, 11:59 p.m.]

Effective Date of Rule: September 3, 2017, 11:59 p.m.

Purpose: Amends Puget Sound commercial salmon fisheries for Areas 7 and 7A.

Citation of Rules Affected by this Order: Repealing WAC 220-47-50100C.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to close the commercial Pacific salmon fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A because information from treaty Indian and the Washington department of fish and wildlife managed all citizens fisheries indicate that the United States share of Fraser River pink salmon authorized by the Pacific Salmon Commission will be taken by Fraser River Panel approved fisher-

ies operating through midnight Sunday, September 3, 2017. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 3, 2017.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. September 3, 2017:

WAC 220-47-50100C Puget Sound all-citizen commercial salmon fishery—Open periods. (17-227)

WSR 17-18-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-225—Filed September 5, 2017, 1:43 p.m., effective September 5, 2017, 1:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends size and daily limit rules for eastside lakes.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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: These lakes are scheduled to be treated with rotenone to remove nuisance fish species as part of an effort to restore the quality of trout fishing in those waters. Rotenone is an organic substance derived from the roots of tropical plants, which has been approved for use as a fish pesticide by the United States Environmental Protection Agency. Prior to the treatment, fishery managers are allowing

current license holders to harvest fish without size or daily limits and to extend the fishing season. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental 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: September 5, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-05000U Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, it is unlawful to violate the provisions below. Unless otherwise amended all permanent rules remain in effect:

(1) Effective immediately through October 15, 2017, the following waters are open for fishing with no size or daily limits for all game fish. Selective gear rules do not apply.

(a) Rigley Lake (Stevens Co.) - Closed effective October 16, 2017 until further notice.

(b) Rocky Lake (Stevens Co.) - Closed effective October 16, 2017, until further notice.

(c) Williams Lake (Stevens Co.) - Closed effective October 16, 2017, until further notice.

(2) Effective immediately through October 22, 2017, the following waters are open for fishing with no size or daily limits for all game fish.

(a) Hog Lake (Spokane Co.) - Closed effective October 23, 2017, until further notice.

(b) Fishtrap Lake (Spokane Co.) - Closed effective October 23, 2017, until further notice.

WSR 17-18-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-236—Filed September 5, 2017, 5:01 p.m., effective September 6, 2017, 5:00 a.m.]

Effective Date of Rule: September 6, 2017, 5:00 a.m.

Purpose: Amends Puget Sound commercial salmon fisheries for Areas 7 and 7A.

Citation of Rules Affected by this Order: New WAC 220-47-50100D; and repealing WAC 220-47-50100D.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This regulation opens portions of Areas 7 and 7A to facilitate removal of Atlantic salmon, a nonnative species which escaped of Atlantic salmon adults operated by Cooke Aquaculture in Deepwater Bay on Cypress Island. 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 the Request of a Non-governmental 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: September 5, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-50100D Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapters 220-47 WAC and Chapter 220-354 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Areas 7 and 7A:** Open in that portion of Area 7; From the south tip of Lummi Island at Carter Point westerly to the northern point of Sinclair Island, to the most north western point of Sinclair Island, then to Towhead Island, from there following 1000' of the western shore of Cypress Island to Strawberry Island then to Fidalgo Head and bounded to the East by the 7/7B line;

And:

those waters Salmon Catch and Reporting Area 7 within the outermost headlands of Eagle Cove, Mulno Cove, and

North Bay (along San Juan Channel) on San Juan Island and Davis Bay on Lopez Island.

And:

those waters Salmon Catch and Reporting Area 7A within the outermost headlands of Birch Bay.

Gill Nets - Open to gill net gear with 5 inch minimum and 6 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed below:

| Open Periods | |
|--------------------------|--------------------|
| 8:15 AM through 11:59 PM | September 6, 2017 |
| 8:15 AM through 11:59 PM | September 7, 2017 |
| 8:15 AM through 11:59 PM | September 8, 2017 |
| 8:15 AM through 11:59 PM | September 9, 2017 |
| 8:15 AM through 11:59 PM | September 10, 2017 |
| 8:15 AM through 11:59 PM | September 11, 2017 |
| 8:15 AM through 11:59 PM | September 12, 2017 |

(a) It is unlawful to retain sockeye, Chinook, coho, chum, pink and rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Areas 7 and 7A:** Open in that portion of Area 7; From the south tip of Lummi Island at Carter Point westerly to the northern point of Sinclair Island, to the most north western point of Sinclair Island, then to Towhead Island, from there following 1000' of the western shore of Cypress Island to Strawberry Island then to Fidalgo Head and bounded to the East by the 7/7B line;

And:

those waters Salmon Catch and Reporting Area 7 within the outermost headlands of Eagle Cove, Mulno Cove, and North Bay (along San Juan Channel) on San Juan Island and Davis Bay on Lopez Island.

And:

those waters Salmon Catch and Reporting Area 7A within the outermost headlands of Birch Bay.

Beach Seines - Open to beach seine gear in accordance with WAC 220-354-200 and according to the times, dates, and conditions as prescribed and listed below:

| Open Periods | |
|-------------------------|--------------------|
| 5:00 AM through 9:00 PM | September 6, 2017 |
| 5:00 AM through 9:00 PM | September 7, 2017 |
| 5:00 AM through 9:00 PM | September 8, 2017 |
| 5:00 AM through 9:00 PM | September 9, 2017 |
| 5:00 AM through 9:00 PM | September 10, 2017 |
| 5:00 AM through 9:00 PM | September 11, 2017 |
| 5:00 AM through 9:00 PM | September 12, 2017 |

(a) It is unlawful to retain sockeye, Chinook, coho, chum, pink and rockfish.

(b) It is unlawful to fish for salmon with beach seine gear in Areas 7 and 7A unless the vessel operator has attended a

"Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **"Quick Reporting Fisheries"** All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-301-030), are designated as "Quick Reporting Required" pursuant to WAC 220-354-090.

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 September 13, 2017:

WAC 220-47-50100D Puget Sound all-citizen commercial salmon fishery—Open periods.

WSR 17-18-106 EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 6, 2017, 11:11 a.m., effective September 6, 2017, 11:11 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule-making order is to amend WAC 392-121-182 to help ensure that school districts and charter schools comply with statutory full-day kindergarten (FDK) requirements, RCW 28A.150.315, when offering alternative learning experience (ALE) courses or course work to students.

Citation of Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.290.

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: RCW 28A.150.315 requires that FDK must be implemented statewide in the 2017-18 school year. Accordingly, FDK programs offered starting in August and September of the current year, including ALE courses or course work provided to FDK students, are required to meet the statutory conditions set forth in RCW 28A.150.315. Immediate adoption of this emergency rule is necessary to ensure that kindergarten students are receiving access to legally appropriate education services.

A preproposal statement of inquiry regarding the adoption of permanent rules regarding this subject was filed at the same time as this emergency rule order.

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 the Request of a Non-governmental 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: September 6, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

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

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

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

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

(2) **General requirements:** A school district or charter school must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

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

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

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and

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

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

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

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

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

(c) "Certificated teacher" means an employee of a school district or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

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

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

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

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

(e) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

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

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

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

learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

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

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

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

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

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

(j) "School-based support staff" means an employee of a school district or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

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

(i) At a similar grade level;

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

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

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

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

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

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

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

(m) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan;

(n) "Written student learning plan" means a written plan for learning that includes at least the following elements:

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

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

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

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

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

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

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

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

(o) "Full-day kindergarten" means a program that is eligible for state-funded full-day kindergarten, as provided for in RCW 28A.150.315 in which any student's alternative learning experience enrollment is claimed as greater than 0.50 full-time equivalent.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed

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

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

(ii) In-person instructional contact; or

(iii) Synchronous digital instructional contact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Alternative learning experience implementation requirements:

(a) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or

course work for special education students must be provided in accordance with chapter 392-172A WAC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of

the alternative learning experience program or is otherwise no longer enrolled.

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

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

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

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

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

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

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

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

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

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

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

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student

must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

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

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

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

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

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

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

(8) Assessment requirements:

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

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

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

(d) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten must administer the Washington kindergarten inventory of developing skills (WaKIDS) to identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

(i) The administration of WaKIDS under this section shall replace the administration of other school district or charter school assessments. Other assessments may only be administered if they seek to obtain information not covered by WaKIDS.

(ii) School districts and charter schools must provide an opportunity for parents and guardians to excuse their children from participation in WaKIDS.

(9) Reporting requirements:

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

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

(c) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

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

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

(d) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(e) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten must submit a report to the superintendent of public instruction by December 15, 2017, describing the ways the school district or charter school is addressing the requirements of RCW 28A.150.315. The report must be made in a form prescribed by the superintendent of public instruction.

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

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

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

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

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

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

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

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

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

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

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

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

(j) For students enrolled in full-day kindergarten, evidence of the following:

(i) On a monthly basis, how the school district or charter school is meeting the following requirements under RCW 28A.150.315(1):

(A) The provision of at least a one thousand-hour instructional program;

(B) The provision of a curriculum that offers a rich, varied set of experiences that assist students in:

(I) Developing initial skills in the academic areas of reading, mathematics, and writing;

(II) Developing a variety of communication skills;

(III) Providing experiences in science, social studies, arts, health, and physical education, and a world language other than English;

(IV) Acquiring large and small motor skills;

(V) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(VI) Learning through hands-on experiences.

(C) The establishment of learning environments that are developmentally appropriate and promote creativity;

(D) The demonstration of strong connections and communication with early learning community providers;

(E) The participation in kindergarten program readiness activities with early learning providers and parents.

(ii) On a monthly basis, the number of hours each student enrolled in the full-day kindergarten program is served in a site-based authentic classroom environment with direct instruction provided by a WaKIDS-trained, Washington state certificated teacher, including a description of instruction.

(iii) On a monthly basis, the number of hours each student enrolled in the full-day kindergarten program is served by someone other than a WaKIDS-trained, Washington state certificated teacher, including a description of the services and who is providing the services.