

WSR 13-14-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-128—Filed June 19, 2013, 3:39 p.m., effective June 19, 2013,
 3:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: The Columbia River sturgeon-retention fishery downstream of the Wauna powerline crossing was originally scheduled to continue through June 30, 2013. Angling effort and catch have exceeded expectations, and the catch guideline of four thousand forty-two white sturgeon is projected to be reached by Friday, June 21. The area of the Columbia River from the Wauna powerlines upstream to Bonneville Dam is currently closed to sturgeon retention.

A two-day retention season was scheduled for June 21 through June 22, 2013, in the area from Bonneville Dam upstream to The Dalles Dam. Angling effort and catch have exceeded expectations, and the catch guideline of one thousand one hundred white sturgeon is projected to be reached by Saturday, June 22.

These actions were adopted at the joint Washington-Oregon public hearing on June 18, 2013. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 19, 2013.

Philip Anderson
 Director

NEW SECTION

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

(1) Effective June 21, 2013, until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to Bonneville Dam and in all adjacent Washington tributaries.

(2) Effective only on June 21, 2013, it is permissible to retain white sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Legal size when open to retain white sturgeon in this area is 38-inches minimum and 54-inches maximum fork length. Beginning June 22, 2013, until further notice, white sturgeon retention is prohibited in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900T Exceptions to statewide
 rules—Columbia River sturgeon.
 (13-101)

WSR 13-14-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-129—Filed June 19, 2013, 4:27 p.m., effective June 20, 2013]

Effective Date of Rule: June 20, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The river was closed temporarily to ensure meeting broodstock needs. Conditions over the past few days favored fish passage, and the remaining four hundred adults needed for broodstock were obtained. There are still five hundred - one thousand spring chinook forecast,

mostly three year old jacks, and available for harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 19, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules--Icicle River (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective June 20 through July 31, 2013, a person may fish for salmon in those waters of the Icicle River from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Rack. Daily limit, two hatchery salmon; minimum size, 12 inches. Night closure is in effect.

REPEALER

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

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

**WSR 13-14-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-130—Filed June 19, 2013, 4:29 p.m., effective June 21, 2013, 12:01 a.m.]

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

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: The run of upper Columbia River sockeye returning to the Wenatchee River and Okanogan River is sufficient to support the anticipated low level of harvest in the Hanford Reach below Priest Rapids Dam. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 19, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. June 21 through July 31, 2013, in waters of the Columbia River from the 395 Bridge in Pasco to Priest Rapids Dam, sockeye salmon may be retained as part of the daily limit.

REPEALER

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

WAC 232-28-61900S Exceptions to statewide rules—Columbia River.

**WSR 13-14-006
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**
(Aging and Long-Term Support Administration)
[Filed June 20, 2013, 9:17 a.m., effective June 23, 2013]

Effective Date of Rule: June 23, 2013.

Purpose: The department is amending and clarifying rules to revise the assessment process for allocating personal care hours as a result of the Washington state supreme court

decision in *Samantha A. v. Department of Social and Health Services*. The department is in the process of adopting these rules as permanent rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The department is proceeding with the permanent rule process. The department filed a CR-101 as WSR 12-20-076 on October 3, 2012, and is currently working on filing the CR-102. This fourth emergency is being requested so that the rule implementation coincides with the necessary enhancements to the department's assessment instrument (CARE). This will ensure that the rules match the technical changes to CARE. Additional time is needed to provide department field staff with training and support, so they are prepared when the enhancements to our electronic systems are implemented. The department has taken the following action over the last twelve months including but not limited to: Hiring a child development expert from Oregon to review our ages in WAC 388-106-0130; review of the expert's opinion; coordination of necessary enhancements to the department's assessment instrument with technical staff.

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

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

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

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

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

Date Adopted: June 19, 2013.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-15 issue of the Register.

WSR 13-14-011
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 21, 2013, 8:13 a.m., effective June 21, 2013, 8:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In anticipation of the legislature failing to adopt an appropriation act prior to the current biennium, the office of financial management is proposing changes to the temporary layoff rules. These changes specifically address holiday compensation, leave accruals, notice period, and appeal rights when a temporary layoff is due to the legislature failing to adopt an operating budget.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-010, 357-31-020, 357-31-025, 357-31-115, 357-31-120, 357-31-125, 357-31-170, 357-31-175, 357-31-180, 357-46-066, 357-46-067, 357-58-553, and 357-58-554.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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: In anticipation of the legislature failing to adopt an appropriation act prior to the current biennium.

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 13, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 13, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 13, Repealed 0.

Date Adopted: June 21, 2013.

Sandi Stewart
Rules Coordinator
State Human Resources Division

NEW SECTION

WAC 357-52-013 Does an employee who has been temporarily laid off due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, have the right to appeal the temporary layoff?

An employee who has been temporarily laid due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, does not have the right to appeal the temporary layoff.

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

AMENDATORY SECTION [(Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)]

WAC 357-31-010 Which employees qualify for holiday compensation? (1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection (1) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the

legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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

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.

AMENDATORY SECTION [(Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)]

WAC 357-31-020 For general government part-time employees, how is holiday compensation prorated? Compensation for holidays (including personal holiday) for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment, excluding all holiday hours. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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.

AMENDATORY SECTION [(Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)]

WAC 357-31-025 How many hours are higher education employees compensated for on a holiday? When a holiday as designated under WAC 357-31-005 falls on a higher education employee's scheduled work day:

(1) Full-time employees receive eight hours of regular holiday pay per holiday. Any differences between the scheduled shift for the day and eight hours may be adjusted by use of vacation leave, use of accumulation of compensatory time as appropriate, or leave without pay.

(2) Part-time higher education employees are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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.

AMENDATORY SECTION [(Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)]

WAC 357-31-115 How many hours of sick leave does an employee earn each month? (1) Full-time employees earn eight hours of sick leave per month.

(2) Part-time general government employees earn sick leave on a pro rata basis in accordance with WAC 357-31-125.

(3) Part-time higher education employees earn sick leave on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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.

AMENDATORY SECTION [(Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)]

WAC 357-31-120 Do employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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.

AMENDATORY SECTION [(Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)]

WAC 357-31-125 For general government part-time employees, how is leave accrual prorated? Vacation and sick leave accruals for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section (unless the temporary layoff is implemented due to the fail-

ure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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.

AMENDATORY SECTION [(Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)]

WAC 357-31-170 At what rate do part-time employees accrue vacation leave? (1) Part-time general government employees accrue vacation leave credits on a pro rata basis in accordance with WAC 357-31-125.

(2) Part-time higher education employees accrue on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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.

AMENDATORY SECTION [(Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)]

WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status)).

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

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.

AMENDATORY SECTION [(Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)]

WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay? Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC 357-46-063 (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status), or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC 357-31-345. These adjustments affect the rate at which an employee accrues vacation leave.

(2) When a higher education employee takes more than ten working days of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status).

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

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.

AMENDATORY SECTION [(Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)]

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer must provide the employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

(In the event that a temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, an employer must provide the employee at least one calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of their status during temporary layoff. Notice

of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.)

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.

AMENDATORY SECTION [(Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)]

WAC 357-46-067 What is an employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary, seniority, and unbroken service dates are not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status);

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff (unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case an employee would not receive holiday compensation during temporary layoff); and

(d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.

(2) An employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

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

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.

AMENDATORY SECTION [(Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)]

WAC 357-58-553 What is the notice requirement to temporarily layoff a WMS employee? An employer must provide the WMS employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

((In the event that a temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, an employer must provide the WMS employee at least one calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of their status during temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.))

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.

AMENDATORY SECTION [(Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)]

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;

(b) An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff ((unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case time spent on temporary layoff will not be considered time in pay status));

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff ((unless the temporary layoff is implemented due to the failure of the legislature to adopt an appropriation act prior to the end of the current biennium, in which case an employee would not receive holiday compensation during temporary layoff)); and

(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for their vacation leave balance; and

(c) Use of their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds. The only exception is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dol-

lars or less and the employee's agency enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave during the period of temporary layoff.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

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

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

WSR 13-14-012
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 21, 2013, 8:13 a.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013, or as soon thereafter as the legislature adopts an appropriations act for the 2013-15.

Purpose: The 2013–2015 operating budget that was passed by the senate and house provides for a longevity step to be added to the state salary schedule. It provides an approximate 2.5 percent increase. Employees who have been at the top step (step L) in the same salary range for six years will move to the new step M. These new rules and rule modifications address this new salary step.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-205, 357-28-165, 357-28-135, 357-28-035, 357-28-120, 357-13-090, 357-28-090, 357-28-110, 357-28-075, 357-28-115, 357-28-070, 357-28-055, 357-28-056, and 357-28-060.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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: State agencies and/or institutions would not be able to implement step M longevity step as described in 2013-2015 operating budget without adoption of these 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 5, Amended 14, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 14, 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 5, Amended 14, Repealed 0.
Date Adopted: June 21, 2013.

Sandi Stewart
Rules Coordinator
State Human Resources Division

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-13-090 How is an employee affected when his/her position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p> <p>Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed ((the top)) step <u>L</u> of the range as provided in WAC 357-28-115.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employer's layoff procedure applies.</p>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-205 Upon return from exempt service, how is the employee's salary set? The employee's base salary must not be less than the employee's previous base salary in classified service, adjusted according to any changes to salary range that occurred while the employee was in exempt service.

If the employee was at step L at the time they accepted the exempt appointment and they are returned to step L of the same pay range, time spent in exempt service will count towards the six years to qualify for step M.

AMENDATORY SECTION (Amending WSR 05-21-061, filed 10/13/05, effective 11/15/05)

WAC 357-28-035 What must be addressed in the employer's salary determination policy? The employer's

salary determination policy must minimally address the following:

- (1) Setting base salary for new employees;
- (2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;
- (3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;
- (4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;
- (5) Setting base salary when an employee ~~((accepts a layoff option, accepts a demotion in lieu of layoff,))~~ is appointed from an internal or statewide layoff list ~~((, or is reallocated to a position with a lower range and the employee's previous base salary is not within the salary range of the new position));~~
- (6) Setting base salary when an employee is reallocated to a position with a lower salary range and the employee's previous base salary is above step L of the new salary range

as permitted in WAC 357-28-120. Under no circumstance should an employee's salary exceed their previous base salary.

(7) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;

~~((7))~~ (8) Setting base salary when an employee is reverted following a voluntary demotion; and

~~((8))~~ (9) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100.

AMENDATORY SECTION (Amending WSR 10-17-062, filed 8/13/10, effective 9/15/10)

WAC 357-28-055 How is the periodic increment date determined for a general government employee? (1) For a general government employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005 is retained.

(2) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set above the minimum but below ~~((the maximum))~~ step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) A general government employee appointed to a position on or after July 1, 2005, whose base salary is set at ~~((the maximum))~~ step L of the range will not have a periodic increment date set. If the employee later receives a new appointment, the periodic increment date will be set at that time, as described in this section.

(5) Once a general government employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 and 357-28-075; or

(b) The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-345.

AMENDATORY SECTION (Amending WSR 06-11-048, filed 5/11/06, effective 6/12/06)

WAC 357-28-056 How is the periodic increment date determined for a higher education employee? (1) For a higher education employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005 is retained.

(2) For a higher education employee appointed to a position on or after July 1, 2005 whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a higher education employee appointed to a position on or after July 1, 2005 whose base salary is set above the minimum but below ~~((the maximum))~~ step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) Once a higher education employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 and 357-28-075; or

(b) The employee is appointed to another position with a different salary range maximum. Upon subsequent appointment, the provisions of subsection (2) and (3) of this section apply.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-060 When does an employee receive an increment increase? Unless adjusted under the provisions of WAC 357-28-070 or 357-28-075, an employee must receive a two step increase to base salary on the periodic increment date. Increment increases continue until the employee reaches ~~((the top))~~ step L of the salary range.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-28-070 Can an employer adjust the timing and amount of increment increases? Employers may adjust the timing and/or amount of regularly scheduled increment increases stated in WAC 357-28-060 by resetting the periodic increment date based on the nature of the work or training requirements. This may apply to all employees, employees in specific positions, all employees allocated to a class, or all employees in an organizational unit. This may happen as long as employees receive minimally an increase of two steps annually until their salary reaches ~~((the top))~~ step L of the salary range.

AMENDATORY SECTION (Amending WSR 05-21-061, filed 10/13/05, effective 11/15/05)

WAC 357-28-075 Can an employer accelerate or defer increment increases based on performance? Employers who have received performance management confirmation from the director may in accordance with the employer's policy on performance-based increments:

(1) Accelerate the timing and/or amount of regularly scheduled increment increases stated in WAC 357-28-060 by advancing the periodic increment date for individual employees. This may only happen if employees receive an increase of at least two steps every twelve months from the periodic increment date until their salary reaches ~~((the top))~~ step L of the salary range. When the periodic increment date is advanced, the employee has a new periodic increment date.

(2) Defer scheduled increment increases by postponing the periodic increment date for individual employees whose performance is less than satisfactory. When the periodic increment date is postponed to a future date, the employee has a new periodic increment date.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business

related reasons? The employer may adjust an employee's base salary up to step L within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-110 Must an employee who is promoted to a position in a class with a higher salary range receive a salary increase? An employee who is promoted to a position in a class with a higher salary range must receive a minimum increase of two steps not to exceed ~~((the top))~~ step L of the salary range. The employer may grant higher increases not to exceed step L if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation~~(;)~~;

(2) The increase is necessary for internal salary alignment, retention of the employee, or other documented business needs~~(;)~~; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase? An employee occupying a position that is reallocated to a class with a higher salary range must receive at least two steps not to exceed ~~((the top))~~ step L of the salary range in accordance with WAC 357-28-110.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range? An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to his/her previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to ~~((the maximum))~~ step L of the salary range for the reallocated position. The employee's base salary may be set at set M or higher than the range maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action? The base salary of an employee appointed to a position due to a layoff action must be determined as follows:

(1) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

(2) An employee who accepts a demotion in lieu of layoff or accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to ~~((the new range maximum. The employee's base salary may be set higher than the range maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy))~~ step L of the new salary range. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range.

(3) An employee who is appointed from an internal or statewide layoff list to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

(4) An employee who is appointed from an internal or statewide layoff list to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-28-165 When an exempt position is converted to classified, how is the base salary of the incumbent determined? If an exempt position is converted to classified status under the provisions of WAC 357-19-225, the base salary of the incumbent must not be less than the exempt salary at the time of conversion. If the employee's salary at the time of conversion exceeds the maximum of the salary range, the employee's base salary must be set outside the range in accordance with WAC 357-28-040.

If the exempt salary is equal to step L of the classified position and the employee has been at that salary level for six or more years, the employee will progress to step M upon conversion. If the employee has been at that salary level for less than six years, the employee will progress to step M when the total amount of time equals six years.

If the exempt salary is between step L and step M of the new classified salary range and the employee has been at that salary for six or more years, the employee will be placed at step M upon conversion. If the employee has been at that salary level for less than six years, the employee will progress to step M when the total amount of time equals six years.

If the exempt salary is equal to step M of the new classified salary range, the employee will be placed at step M upon conversion.

NEW SECTION

WAC 357-28-082 Is step M on the salary schedule different than other salary steps? Step M is a longevity step. An employee cannot be appointed to step M upon initial hire or progress to step M upon promotion.

NEW SECTION

WAC 357-28-084 Can an employee be appointed to step M upon demotion? An employee cannot be appointed to step M upon demotion (voluntary or involuntary) unless the employee was at step M of the salary range from which the employee is demoting or the employee was previously at step M in the salary range of the class the employee is demoting to.

NEW SECTION

WAC 357-28-086 When may an employee progress to step M of the salary range? (1) If an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L. The progression to step M is regardless of what has transpired in the six years since the employee was appointed to step L, provided that the employee is at step L in the same pay range as the pay range the employee was in at the beginning of the six year period.

(2) With director approval, higher education institutions may make all movements to step M effective:

(a) The first of the current month for actions occurring between the first and the fifteenth of the month; or

(b) The first of the following month for actions occurring between the sixteenth and the end of the month.

NEW SECTION

WAC 357-28-088 If an employee accepts a new appointment will the time spent at step L count towards the six years to qualify for step M in the new position? If an employee accepts a new appointment to a position which is the same pay range as the previous position, the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee accepts a new appointment to a position which is a different pay range as the previous position, the time at step L in the previous position will not count towards the six years to qualify for step M in the new salary range.

NEW SECTION

WAC 357-31-357 How does leave without pay affect the six year time period used to qualify for step M? The six year time period used to qualify for step M will not be extended for periods of leave without pay.

**WSR 13-14-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-131—Filed June 27, 2013, 8:54 a.m., effective June 28, 2013,
9:00 p.m.]

Effective Date of Rule: June 28, 2013, 9:00 p.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational share of spot shrimp has been taken in Marine Area 6. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2013.

Philip Anderson
Director

NEW SECTION

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

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

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

i. Open Thursday through Saturday each week to the harvest of all shrimp species.

b. Effective immediately, until further notice, the portion of Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, then east

of a line projected true north and south from the western tip of Crane Island, then east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary:

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

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

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

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

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

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

4) Effective immediately until further notice, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Area 5, are open to the harvest of all shrimp species.

REPEALER

The following section of the Washington Administrative Code is repealed 9:00 p.m. June 28, 2013:

WAC 220-56-32500H Shrimp—Areas and seasons. (13-114)

WSR 13-14-037

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 27, 2013, 9:17 a.m., effective July 12, 2013]

Effective Date of Rule: July 12, 2013.

Purpose: The department is amending WAC 388-106-0300 and 388-106-0305 in order to continue dental services under the COPES waiver as required by the legislature in 2011. The department received approval for this action from the Centers for Medicare and Medicaid in 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0300 and 388-106-0305.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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 filing is necessary in order to preserve public health, by continuing dental services available under the COPES waiver. The emergency filing is also necessary to officially implement a requirement of the 2011 budget. The department filed the CR-101 on March 20, 2013, and [is] now proceeding with filing the CR-102. This CR-103E supersedes the CR-103E filed on March 13, 2013, at WSR 13-07-024.

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

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

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

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

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

Date Adopted: June 27, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicare-reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicare-reimbursed home health services as provided under WAC 182-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 182-500-0700;

(b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicare and/or medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicare-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency.

A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(14) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

- (i) Can independently perform or obtain the services provided at an adult day health center;
- (ii) Have referred care needs that:
 - (A) Exceed the scope of authorized services that the adult day health center is able to provide;
 - (B) Do not need to be provided or supervised by a licensed nurse or therapist;
 - (C) Can be met in a less structured care setting;
 - (D) In the case of skilled care needs, are being met by paid or unpaid caregivers;
 - (E) Live in a nursing home or other institutional facility;
- or
- (F) Are not capable of participating safely in a group care setting.

(15) Adult comprehensive dental services as defined in WAC 388-182-1050 through 182-535-1550, when you are age twenty-one or older and the service is not covered by medicaid state plan services.

(a) The services do not include crowns, endodontics, orthodontics, and oral surgeries not related to preventive or restorative oral health.

(b) All payments to providers will be made by the health care authority under chapter 182-535 WAC.

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

WAC 388-106-0305 What services may I receive under COPEs if I live in a residential facility? If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPEs:

- (1) Personal care services as defined under WAC 388-106-0010.
- (2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:
 - (a) Medically necessary under WAC 388-500-0005; and
 - (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and
 - (c) Directly medically or remedially beneficial to you; and
 - (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and
 - (e) In addition to and do not replace the services required by the department's contract with a residential facility.
- (3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:
 - (a) Adjusting to a serious impairment;
 - (b) Managing personal care needs; or
 - (c) Developing necessary skills to deal with care providers.

- (4) Transportation services, when the service:
 - (a) Provides access to community services and resources to meet a therapeutic goal;
 - (b) Is not diverting in nature;
 - (c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community; and
 - (d) Does not replace the services required by DSHS contract in residential facilities.
- (5) Skilled nursing, when the service is:
 - (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;
 - (b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 388-551-2100; and
 - (c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).
- (6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.
 - (a) Nursing assessment/reassessment;
 - (b) Instruction to you and your providers;
 - (c) Care coordination and referral to other health care providers;
 - (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.
 - (e) File review; and/or
 - (f) Evaluation of health-related care needs affecting service plan and delivery.
- (7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:
 - (a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.
 - (b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.
- (8) Adult day health services as described in WAC 388-71-0706 when you are:
 - (a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:
 - (i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore

or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility; or

(F) Are not capable of participating safely in a group care setting.

(9) Adult comprehensive dental services as defined in WAC 182-535-1050 through 182-535-1550, when you are age twenty-one or older, and the service is not covered by medicaid state plan services.

(a) The services do not cover crowns, endodontics, orthodontics, and oral surgeries not related to preventive or restorative oral health.

(b) All payments to providers will be made by the health care authority under chapter 182-535 WAC.

WSR 13-14-045

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-132—Filed June 27, 2013, 2:09 p.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Harvest landings limits for sea cucumbers have been requested by the industry in an effort to conserve harvest quota and maximize market opportunities. Prohibition of all diving from licensed sea cucumber harvest vessels within

two days of scheduled openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100Y Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective July 1, 2013, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2 and 3 on Monday, Tuesday and Wednesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 on Monday through Friday of each week.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 1,800 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum.

(4) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

WSR 13-14-046

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-133—Filed June 27, 2013, 2:13 p.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Recent estimates of Okanogan sockeye are predicted to be adequate to allow for an anticipated low level (3,000-4,000) of angler harvest. Allowing sockeye retention will provide additional fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia and Okanogan rivers. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) In the waters listed below daily limit six salmon, and no more than two adult hatchery Chinook salmon and two adult sockeye salmon may be retained in the daily limit. Minimum size for adult Chinook salmon is 24 inches; minimum size for adult sockeye salmon is 12 inches. Anglers must stop fishing once adult salmon limit has been harvested. Barbless hooks required; bait is allowed. Salmon with floy tags and/or one or more holes (round, approximately 1/4" in diameter) punched in the tail must be released.

(a) Effective July 1, 2013, until further notice, in waters of the Columbia River from Priest Rapids Dam to Wells Dam.

(b) Effective July 16, 2013, until further notice, in waters of the Columbia River from Wells Dam to Highway 173 Bridge in Brewster.

(c) Effective July 1, 2013, until further notice, in waters of the Columbia River from the Highway 173 Bridge in Brewster to Chief Joseph Dam.

(d) Effective July 1, 2013, until further notice, in waters of the Okanogan River from the mouth upstream to the first Highway 97 Bridge.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900B Exceptions to statewide rules. (13-84)

WSR 13-14-047

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-134—Filed June 27, 2013, 2:15 p.m., effective July 1, 2013, 7:00 a.m.]

Effective Date of Rule: July 1, 2013, 7:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2013 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for spot shrimp; and (2) opens the shrimp beam trawl fishery in SMA 1B-20B. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2013.

Philip Anderson
Director

NEW SECTION

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

- (1) Shrimp pot gear:
 - (a) All waters of Shrimp Management Areas 1A, 1C, 3, 4, and 6 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:
 - i) All waters of the Discovery Bay Shrimp District are closed.
 - ii) All waters of Shrimp Management Areas 4 and 6 are closed to the harvest of spot shrimp.
 - (b) The spot shrimp catch accounting biweekly management periods are as follows:
 - i) July 1-16, July 17-30, July 31-August 13, and August 14-27.
 - (c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds per biweekly management period, with the following exceptions:
 - i) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per biweekly management period in Shrimp Management Areas 1A and 1C, or to exceed 600 pounds per biweekly management period in Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Area) 23A-E and 23B.
 - (d) It is unlawful to pull shellfish pots in more than one catch area per day.
 - (e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. 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.
- (2) Shrimp beam trawl gear:
 - (a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and catch area 23D) is open, effective immediately, 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) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B are open, effective immediately, until further notice.
 - (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 7:00 a.m. July 1, 2013:

WAC 220-52-05100B Puget Sound shrimp beam trawl fishery—Season. (13-127)

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

[Order 13-135—Filed June 27, 2013, 2:18 p.m., effective June 29, 2013]

Effective Date of Rule: June 29, 2013.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Closes the John Day Pool for retention of white sturgeon. The harvest guideline is expected to be reached June 29, 2013. This action effectively closes retention of sturgeon in all areas of the Columbia River downstream of McNary Dam, except The Dalles Pool. Catch-and-release fisheries remain in place, except within designated sturgeon spawning sanctuaries located immediately downstream of McNary, John Day, and Bonneville dams. These actions were adopted at the joint Washington-Oregon public hearing on June 26, 2013. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2013.

Philip Anderson
Director

NEW SECTION

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

(1) Effective immediately until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to The Dalles Dam and in all adjacent Washington tributaries.

(2) Effective immediately until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from John Day Dam upstream to McNary Dam and in all adjacent Washington tributaries.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective June 29, 2013:

WAC 232-28-61900Q Exceptions to statewide rules—Columbia River sturgeon. (13-128)

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

[Order 13-136—Filed June 27, 2013, 2:23 p.m., effective June 27, 2013, 2:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This fishery must close, due to the declining spring chinook run, catch rates and cumulative season harvest estimates in the three fishery zones on the Snake River through June 25, 2013, and Endangered Species Act impact limitations. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: June 27, 2013.

Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900P Exceptions to statewide rules—Snake River. (13-123)

WSR 13-14-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-137—Filed June 27, 2013, 2:25 p.m., effective June 29, 2013]

Effective Date of Rule: June 29, 2013.

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

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets a 2.5-day treaty Indian commercial gillnet fishing [fishery] in the mainstem Columbia River for salmon and steelhead. Sales of fish caught from

platform/hook and line in Zone 6 and immediately downstream of Bonneville Dam are reduced to five days per week (closed Sunday and Mondays). Sales of fish caught from Yakama Nation tributary fisheries continue to be allowed. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on June 26, 2013. Conforms state rules with tribal rules. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

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

Date Adopted: June 27, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in the Wind River, Klickitat River, Yakima River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

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

a. Season: 6:00 a.m. July 1 through 6:00 p.m. July 3, 2013.

b. Gear: Gillnets. 7-inch minimum mesh restriction.

c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sales of fish caught during open gillnet periods are allowed after the period concludes, as long as the fish were landed during the open period.

d. Sanctuaries: All sanctuaries for this gear type in effect, except Spring Creek.

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

a. Season: Open through July 31, 2013, except closed Sundays and Mondays.

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

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

d. All sanctuaries for these gear types are in effect.

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

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

b. Season: Open through July 31, 2013 except closed Sundays and Mondays.

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

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property. Sales of fish caught during open gillnet periods are allowed after the period concludes, as long as the fish were landed during the open period

4. Columbia River Tributaries upstream of Bonneville Dam:

a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, Wind River, Klickitat River, and Yakima River.

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

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sales are allowed only when lawfully enacted by Yakama Nation regulations.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective June 29, 2013:

WAC 220-32-05100I Columbia River salmon seasons above Bonneville Dam. (13-121)

**WSR 13-14-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-139—Filed June 27, 2013, 3:56 p.m., effective June 27, 2013, 3:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-44-095.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Mackerel are managed under the federal Coastal Pelagics Fishery Management Plan (plan). This action is consistent with the plan and the federal rules that set annual specifications for mackerel, including authorizing the incidental harvest of mackerel (Scombridae) in the Pacific sardine purse seine fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-44-09500A Coastal sardine purse seine fishery. Notwithstanding provisions of WAC 220-44-095, effective immediately until further notice, it is unlawful to retain mackerel (Scombridae) taken incidental to a lawful sardine fishery in any amount exceeding forty-five percent of the weight of the total landing.

**WSR 13-14-067
EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner's Docket No. R 2013-14—Filed June 28, 2013, 2:12 p.m., effective June 28, 2013, 2:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Beginning January 1, 2014, the form and rating requirements for individual and small group plans require discontinuation and replacement of nongrandfathered health plans. The requirements affect not just the commercial individual and small group market, but also coverage issued through associations or member governed groups to individual and small group purchasers. The rules explain the commissioner's requirements for transitioning the market, in particular the grandfathered and nongrandfathered association and member-governed group health plans, from current coverage to the required replacement coverage.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.700, 48.43.715, 48.44.050, 48.46.200.

Other Authority: 45 C.F.R. 150.101(2).

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

Reasons for this Finding: The rules are required for an orderly market transition from noncompliant plans that must be discontinued, to replacement plans that must be in place by the next renewal date for each group or individual after January 1, 2014. Without the transition guidance in these regulations, issuers would begin wholesale replacement of association plan policies, rather than being able to evaluate and transition groups at renewal. In order to meet the discontinuation and replacement timelines applicable under RCW 48.43.035, notices must be issued not later than ninety days before renewal. In addition, for plans offered to association members, specific guidance on how the federally preempted small group exemption does or does not apply is required in order for issuers to ensure that plans are correctly rated, and that the forms are in compliance with federal law. The rules also implement 45 C.F.R. 147.140.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 0, Repealed 0; Federal Rules or Standards: New 4, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: June 28, 2013.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-170-950 Grandfathered health plan status. (1) An issuer must retain in its files all necessary documentation to support its determination that a purchaser's plan is grandfathered. The information must be sufficient to demonstrate that the issuer's determination of grandfathered status is credible. For purposes of this section, "grandfathered plan" means a health plan that meets the requirements of this section and as defined in RCW 48.43.005.

(2) An issuer's documentation supporting grandfathered plan designation must be made available to the commissioner or the U.S. Department of Health and Human Services for review and examination upon request, and retained for a period of not less than ten years. For each plan, the records supporting the issuer's determination must also be made available to participants and beneficiaries upon request.

(3) An issuer's documentation must establish for each grandfathered plan that since March 23, 2010:

(a) The plan was not amended to eliminate all or substantially all the benefits to diagnose or treat a particular condition. A list of all plan benefit amendments that eliminate benefits and the date of the amendment is the minimum level of acceptable documentation that must be available to support this criteria;

(b) The cost-sharing percentage requirements, if applicable, for the plan were not increased more than three percent after March 23, 2010. A list of each cost-sharing percentage that has been in place for a grandfathered group's plan, beginning with the cost-sharing percentage on March 23, 2010, is the minimum level of acceptable documentation that must be available to support this criteria;

(c) The fixed cost-sharing requirements other than copayments did not increase by a total percentage measured from March 23, 2010 to the date of change that is more than the sum of medical inflation plus fifteen percent. A list of the fixed cost-sharing requirements other than copayments that apply to a grandfathered group's plan beginning on March 23, 2010, and a record of any increase, the date and the amount of the increase, is the minimum level of documentation that must be available to support this criteria;

(d) Copayments did not increase by an amount that exceeds the greater of:

(i) A total percentage measured from March 23, 2010 to the date of change that is more than the sum of medical inflation plus fifteen percent, or

(ii) Five dollars, adjusted annually for medical inflation measured from March 23, 2010. A record of all copayments beginning on March 23, 2010 applicable to a grandfathered group plan, and any changes in the copayment since that date is the minimum level of documentation that must be available to support this criterion.

(e) The employer's contribution rate toward any tier of coverage for any class of similarly situated individuals did not decrease by more than five percent below the contribution rate in place on March 23, 2010, expressed as a percentage of the total cost of coverage. The total cost of coverage must be determined using the methodology for determining applicable COBRA premiums. If the employer's contribution rate is based on a formula such as hours worked, a decrease of more than five percent in the employer's contributions under the formula will cause the plan to lose grandfathered status. The issuer must retain a record of the employer's contribution rate for each tier of coverage, and any changes in that contribution rate, beginning March 23, 2010 as the minimum level of documentation that must be available to support this criteria;

(f) On or after March 23, 2010, the plan was not amended to impose an overall annual limit on the dollar value of benefits that was not in the applicable plan documents on March 23, 2010;

(g) On or after March 23, 2010, the plan was not amended to adopt an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit for all benefits that was in effect on March 23, 2010; and

(h) The plan was not amended to decrease the dollar value of the annual limit, regardless of whether the plan or

health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits.

(4) In addition to documentation establishing that none of the prohibited changes described in subsection (3) of this section have occurred, an issuer must also make available to the commissioner upon request the following information for each grandfathered plan:

(a) Enrollment records of new employees and members added to the plan after March 23, 2010;

(b) Underwriting rules and guidelines applied to enrollees on or after March 23, 2010; and

(c) Proof of notification to the individual or group of its plan's grandfathered status designation for each year for which the status is claimed.

(5) A change made to a plan before March 23, 2010 but that became effective after March 23, 2010 is permitted without negating a plan's grandfathered status if the change was adopted pursuant to a legally binding contract, state insurance department filing or written plan amendment. If the plan change resulted from a merger, acquisition or similar business action where one of the principal purposes is covering new individuals from the merged or acquired group under a grandfathered health plan, the plan may not be designated as grandfathered.

(6) An issuer may delegate the administrative functions related to documenting or determining grandfathered status designation to a third party. Such delegation does not relieve the issuer of its obligation to ensure that the designation is correctly made, that replacement plans are issued in a timely and compliant manner as required by state or federal law, and that all requisite documentation is kept by the issuer.

(7) If the commissioner determines that an issuer incorrectly designated a group plan as grandfathered, the plan is non-grandfathered, and must be discontinued and replaced with a plan that complies with all relevant market requirements within thirty days. This section does not preclude additional enforcement action.

(8) An issuer must designate whether a plan is grandfathered or nongrandfathered as required by the Washington State SERFF filing instructions.

NEW SECTION

WAC 284-170-952 Market conduct requirements related to grandfathered status. (1) An issuer may allow a group covered by grandfathered health insurance coverage to add new employees to its health benefit plan, and move employees between benefit options at open enrollment without affecting grandfathered status, as long as the group's plan does not change in any way that triggers the loss of grandfathered status as set forth in 45 CFR 147.140.

(2) An issuer must provide a statement in the plan materials provided to participants or beneficiaries describing the benefits provided under the plan, explaining that the group health plan believes it is a grandfathered health plan within the meaning of Section 1251 of the Affordable Care Act, and include contact information for questions and complaints that conforms to the model notice language found in 45 CFR 147.140.

(3) An issuer must not restrict group eligibility to purchase a non-grandfathered plan offered through an association or member-governed group because the group is not affiliated with or does not participate in the association or member-governed group, unless the association or member-governed group meets the one of the requirements of WAC 284-170-958((1).

(4) WAC 284-170-950 through WAC 284-170-958 does not prohibit an issuer from discontinuing a grandfathered plan design and replacing it with a non-grandfathered plan.

(5) An issuer must not limit eligibility based on health status for either grandfathered or nongrandfathered health plans.

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.

NEW SECTION

WAC 284-170-955 Association health plan compliance with plan requirement changes based on statute or regulation. (1) An issuer offering plans through an association or member-governed group must implement all new federal or state health plan market requirements when they become effective. An issuer providing such plans must discontinue non-compliant plans, and offer replacement plans effective on the renewal date of the master group contract. These requirements also apply to member employer groups of less than two or to individual member purchasers. In the event the master group contract and the member group do not have the same renewal date, replacement plans must be offered as follows:

(a) An issuer must provide notice of the discontinuation and replacement of the plan to the affected association member group or plan sponsor, and each enrollee in the affected member group, ninety days prior to the member's anniversary or renewal date notice, whichever is earlier. If an issuer does not have a replacement plan approved by the Commissioner to offer in place of the discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(b) Replacement requirements for this section apply based whether the purchaser is classified as an individual, small group or large group purchaser. For purposes of this section, "purchaser" means the group whose eligibility for the plan is based in whole or in part on membership in the association or member-governed group.

(c) For purposes of this section, the anniversary date means the initial or first date on which the health benefit plan became effective with the issuer, regardless of whether the issuer is subject to other agreements, contracts or trust documents that establish requirements related to the purchaser's coverage in addition to the health benefit plan.

(d) An issuer must not adjust the renewal or anniversary date to delay or prevent application of any federal or state health plan market requirement.

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

NEW SECTION

WAC 284-170-958 Transition of plans purchased by association members. (1) An issuer must treat a plan issued to individuals or small groups through an association or member-governed group as a large group plan only if the plan meets one of the following definitions:

- (a) The plan is offered to government employees only;
- (b) The group is exempt from this regulation as a multiple employer welfare trust;
- (c) The association or member group to whom the plan is issued constitutes an employer under 29 USC § 1002(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), as amended; or
- (d) The size of the purchasing group is larger than a small group as defined in RCW 48.43.005.

(2) An issuer must make a good faith effort to ensure that any association or member-governed group to whom it issues a large group plan meets the requirements of subsection (1) of this section prior to submitting its form and rate filings to the Commissioner, and prior to issuing such coverage. An issuer may reasonably rely upon an opinion from the Department of Labor as reasonable proof that the requirements of 29 USC 1002(5) are met by the association or member-governed group.

(3) For plans offered to association or member-governed groups that do not meet the requirements of subsection (1) of this section, the following specific requirements apply:

(a) An issuer must treat grandfathered plans issued under those purchasing arrangements as a closed pool, and file a single case closed pool rate filing. For purposes of this section, a single case closed pool rate filing means a rate filing which includes the rates and the rate filing information only for the issuer's closed pool enrollees.

(b) For each single case closed pool rate filing, an issuer must file a certification from an officer of the issuer attesting that:

(i) The employer groups covered by the filing joined the association prior to or on March 23, 2010;

(ii) The issuer can establish with documentation in its files that none of the conditions triggering termination of grandfathered status set forth in WAC 284-170-950 or in 45 CFR 2590.715-1251(g) have occurred for any plan members.

(4) For each grandfathered plan issued to an association or member governed group under section (3), the issuer must include the following items in its rate filing:

- (a) Plan Number;
- (b) Identification number assigned to each employer group, including employer groups of less than two;
- (c) Initial contract or certificate date;
- (d) Number of employees for each employer group, pursuant to RCW 48.43.005(11);
- (e) Number of enrolled employees for each employer group for the prior calendar year;
- (f) Current and proposed rate schedule for each employer group; and
- (g) Description of the rating methodology and rate change for each employer group.

(5) WAC 284-43-950 applies for a single case rate closed pool under this section.

WSR 13-14-069**EMERGENCY RULES****BUILDING CODE COUNCIL**

[Filed June 28, 2013, 3:31 p.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013.

Purpose: Amendment of chapters 51-11C and 51-11R WAC, 2012 Washington State Energy Code, Section 301: To merge Ferry, Okanogan, Pend Oreille and Stevens counties into Climate Zone 5B rather than in 6B.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11C-30100 and 51-11R-30100.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Other Authority: RCW 19.27.074.

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 state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council adopted and amended the 2012 edition of the International Energy Efficiency Code (IECC) effective July 1, 2013. The IECC contains regulations based on climate zones developed by the United States Department of Energy, breaking the nation into eight zones. Washington state is predominately within Climate Zones 4 Marine and 5. There are four counties that fall within Climate Zone 6. Under the previous Washington State Energy Code, these four counties were included in the same zone as Spokane County, and shared training and other resources.

The council was petitioned by elected and appointed officials within these four counties to assign these counties to the same Climate Zone as Spokane County, to alleviate any negative economic impact on the people and businesses located in the four counties.

The council concluded that it is in the best interest of the general welfare of the state of Washington to move Ferry, Okanogan, Pend Oreille and Stevens counties into Climate Zone 5B.

The council initiated a permanent rule for this action, but the permanent rule will not become effective until April 1, 2014.

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

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

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

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

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

Date Adopted: June 28, 2013.

C. Ray Allshouse
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-30100 Section C301—Climate zones.

C301.1 General. Climate zones from Table C301.1 shall be used in determining the applicable requirements from Chapter 4.

**Table C301.1
Climate Zones and Moisture Regimes
Designations by State and County**

Key: A - Moist, B - Dry, C - Marine. Absence of moisture designation indicates moisture regime is irrelevant.

WASHINGTON

5B Adams	4C Grays Harbor	4C Pierce
5B Asotin	4C Island	4C San Juan
5B Benton	4C Jefferson	4C Skagit
5B Chelan	4C King	5B Skamania
4C Clallam	4C Kitsap	4C Snohomish
4C Clark	5B Kittitas	5B Spokane
5B Columbia	5B Klickitat	((6B)) 5B Stevens
4C Cowlitz	4C Lewis	4C Thurston
5B Douglas	5B Lincoln	4C Wahkiakum
((6B)) 5B Ferry	4C Mason	5B Walla Walla
5B Franklin	((6B)) 5B Okanogan	4C Whatcom
5B Garfield	4C Pacific	5B Whitman
5B Grant	((6B)) 5B Pend Oreille	5B Yakima

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

WAC 51-11R-30100 Section R301—Climate zones.

R301.1 General. Climate zones from Table R301.1 shall be used in determining the applicable requirements from Chapter 4. Locations not in Table R301.1 (outside the United States) shall be assigned a climate zone based on Section R301.3.

R301.2 Warm humid counties. Warm humid counties are identified in Table R301.1 by an asterisk.

R301.3 International climate zones. The climate zone for any location outside the United States shall be determined by applying Table R301.3(1) and then Table R301.3(2).

**TABLE R301.1
CLIMATE ZONES, MOISTURE REGIMES, AND WARM-HUMID
DESIGNATIONS BY STATE AND COUNTY**

Key: A - Moist, B - Dry, C - Marine. Absence of moisture designation indicates moisture regime is irrelevant. Asterisk (*) indicates a warm-humid location.

WASHINGTON

5B Adams	4C Grays Harbor	4C Pierce
5B Asotin	4C Island	4C San Juan
5B Benton	4C Jefferson	4C Skagit
5B Chelan	4C King	5B Skamania
4C Clallam	4C Kitsap	4C Snohomish
4C Clark	5B Kittitas	5B Spokane
5B Columbia	5B Klickitat	((6B)) 5B Stevens
4C Cowlitz	4C Lewis	4C Thurston
5B Douglas	5B Lincoln	4C Wahkiakum
((6B)) 5B Ferry	4C Mason	5B Walla Walla
5B Franklin	((6B)) 5B Okanogan	4C Whatcom
5B Garfield	4C Pacific	5B Whitman
5B Grant	((6B)) 5B Pend Oreille	5B Yakima

WSR 13-14-070

**EMERGENCY RULES
BUILDING CODE COUNCIL**

[Filed June 28, 2013, 3:32 p.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013.

Purpose: Amendment of chapter 51-11C WAC, 2012 Washington State Energy Code, Section 402.3.1: Add a prescriptive path allowance for glazing over thirty percent of wall area with high performance glazing.

Citation of Existing Rules Affected by this Order: Amending 51-11C-40231, 51-11C-402131, 51-11C-402133, and 51-11C-402134.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Other Authority: RCW 19.27.074.

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 state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council adopted and amended the 2012 edition of the International Energy Efficiency Code (IECC) effective

July 1, 2013. The IECC limits the amount of glazing permitted in commercial buildings using the prescriptive method of building to thirty percent of the gross above grade wall area. There is an allowance to increase to forty percent if at least half of the area is within the daylight zone, but this is difficult to achieve with high rise building projects that have floor layouts and sections of opaque walls that cannot be glazed due to shared property lines or other site constraints. This change represents a decrease of twenty-five percent of the glazing permitted under the 2009 energy code.

The council was petitioned to allow an alternative method of compliance to increase the glazing percentage if fenestration material of a lower U-factor is used. This would allow a continuation of current building practices modified slightly to achieve more energy savings than under the 2009 code while still remaining economically viable. Many land use zones require high glazing percentages or transparency requirements for retail and other street level amenities. This forces glazing down to the ground level and takes away glazing from the other floors of the building.

The council concluded that it is in the best interest of the general welfare of the state of Washington to create another compliance path within the Washington State Energy Code for commercial buildings.

The council initiated a permanent rule for this action, but the permanent rule will not become effective until April 1, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

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

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

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

Date Adopted: June 28, 2013.

C. Ray Allshouse
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-402131 Equation C402-1—Target UA_t

**Equation C402-1
Target UA_t**

$$UA_t = U_{radt}A_{radt} + U_{mrt}A_{mrt} + U_{rat}A_{rat} + U_{mwt}(A_{mwt} + \frac{A_{mwbgt}}{A_{mwbgt}}) + U_{mbwt}(A_{mbwt} + \frac{A_{mbwbgt}}{A_{mbwbgt}}) + U_{sfmt}(A_{sfmt} + \frac{A_{sfbwt}}{A_{sfbwt}}) + U_{wfw}(A_{wfw} + \frac{A_{wfw-bgt}}{A_{wfw-bgt}}) + U_{fnt}A_{fnt} + U_{fjt}A_{fjt} + F_{st}P_{st} + F_{srt}P_{srt} + U_{dst}A_{dst} + U_{drt}A_{drt} + U_{vgt}A_{vgt} + U_{vgmt}A_{vgmt} + U_{vgmot}A_{vgmot} + U_{vgdt}A_{vgdt} + U_{ogt}A_{ogt}$$

UA_{((a))t} = The target combined specific heat transfer of the gross roof/ceiling assembly, exterior wall and floor area.

Where:

U_{radt} = The thermal transmittance value for roofs with the insulation entirely above deck found in Table C402.1.2.

U_{mrt} = The thermal transmittance value for metal building roofs found in Table C402.1.2.

U_{rat} = The thermal transmittance value for attic and other roofs found in Table C402.1.2.

U_{mwt} = The thermal transmittance value for opaque mass walls found in Table C402.1.2.

U_{mbwt} = The thermal transmittance value for opaque metal building walls found in Table C402.1.2.

U_{sfmt} = The thermal transmittance value for opaque steel-framed walls found in Table C402.1.2.

U_{wfw} = The thermal transmittance value for opaque wood framed and other walls found in Table C402.1.2.

U_{fnt} = The thermal transmittance value for mass floors over unconditioned space found in Table C402.1.2.

U_{fjt} = The thermal transmittance value for joist floors over unconditioned space found in Table C402.1.2.

F_{st} = The F-factor for slab-on-grade floors found in Table C402.1.2.

F_{srt} = The F-factor for radiant slab floors found in Table C402.1.2.

U_{dst} = The thermal transmittance value for opaque swinging doors found in Table C402.2.

- U_{drt} = The thermal transmittance value for opaque roll-up or sliding doors found in Table C402.2.
- U_{vgt} = The thermal transmittance value for vertical fenestration with nonmetal framing found in Table C402.3 which corresponds to the proposed vertical fenestration area as a percent of gross exterior wall area. * Buildings utilizing Section C402.3.1.3 shall use the thermal transmittance value specified there.
- U_{vgmt} = The thermal transmittance value for vertical fenestration with fixed metal framing found in Table C402.3 which corresponds to the proposed vertical fenestration area as a percent of gross exterior wall area. * Buildings utilizing Section C402.3.1.3 shall use the thermal transmittance value specified there.
- U_{vgmot} = The thermal transmittance value for vertical fenestration with operable metal framing found in Table C402.3 which corresponds to the proposed vertical fenestration area as a percent of gross exterior wall area. * Buildings utilizing Section C402.3.1.3 shall use the thermal transmittance value specified there.
- U_{vgdt} = The thermal transmittance value for entrance doors found in Table C402.3 which corresponds to the proposed vertical fenestration area as a percent of gross exterior wall area. * Buildings utilizing Section C402.3.1.3 shall use the thermal transmittance value specified there.
- U_{ogt} = The thermal transmittance for skylights found in Table C402.3 which corresponds to the proposed skylight area as a percent of gross exterior roof area.
- A_{fnt} = The proposed mass floor over unconditioned space area, A_{fm} .
- A_{fjt} = The proposed joist floor over unconditioned space area, A_{fj} .
- P_{st} = The proposed linear feet of slab-on-grade floor perimeter, P_s .
- P_{srt} = The proposed linear feet of radiant slab floor perimeter, P_{rs} .

- A_{dst} = The proposed opaque swinging door area, A_{ds} .
- A_{drt} = The proposed opaque roll-up or sliding door area, A_{dr} .

and

If the vertical fenestration area as a percent of gross above-grade exterior wall area does not exceed the maximum allowed in Section C402.3.1.3:

- A_{mwt} = The proposed opaque above grade mass wall area, A_{mw} .
- A_{mbwbg} = The proposed opaque above grade mass wall area, A_{mwe} .
- A_{mbwt} = The proposed opaque above grade metal building wall area, A_{mbw} .
- A_{mbwbgt} = The proposed opaque above grade metal building wall area, A_{mbwbg} .
- A_{sfmt} = The proposed opaque above grade steel framed wall area, A_{mfw} .
- A_{sfwbgt} = The proposed opaque above grade steel framed wall area, A_{mfwbg} .
- A_{wfw} = The proposed opaque above grade wall wood framed and other area, A_{wfwbg} .
- A_{wfwbg} = The proposed opaque above grade wall wood framed and other area, A_{wfwbg} .
- A_{vgt} = The proposed vertical fenestration area with nonmetal framing, A_{vg} .
- A_{vgmt} = The proposed vertical fenestration area with fixed metal framing, A_{vgm} .
- A_{vgmot} = The proposed vertical fenestration area with operable metal framing, A_{vgmo} .
- A_{vgdt} = The proposed entrance door area, A_{vgd} .

or

For buildings utilizing Section C402.3.1.3, vertical fenestration area as a percent of gross exterior above-grade wall may not exceed the amount allowed by that section. For all other buildings, if the vertical fenestration area as a percent of gross above-grade exterior wall area exceeds the maximum allowed in Section C402.3.1, the area of each vertical fenestration element shall be reduced in the base envelope design by the same percentage and the net area of each above-grade wall type increased proportionately by the same percentage so that the total vertical fenestration area is exactly equal to the allowed percentage per Section C402.3.1 of the gross above-grade wall area. The target

wall area of a given wall type shall be the sum of the proposed below grade area and the increased above-grade area.

and

If the skylight area as a percent of gross exterior roof area does not exceed the maximum allowed in Section C402.3.1:

- A_{radt} = The proposed roof area with insulation entirely above the deck, A_{rad} .
- A_{mrt} = The proposed roof area for metal buildings, A_{mr} .
- A_{rat} = The proposed attic and other roof area, A_{or} .
- A_{ogat} = The proposed skylight area, A_{ogor} or

If the skylight area as a percent of gross exterior roof area exceeds the maximum allowed in Section C402.3.1, the area of each skylight element shall be reduced in the base envelope design by the same percentage and the net area of each roof type increased proportionately by the same percentage so that the total skylight area is exactly equal to the allowed percentage per Section C402.3.1 of the gross roof area.

*NOTE: The vertical fenestration area does not include opaque doors and opaque spandrel panels.

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-402133 Equation C402-3—Target $SHGCA_t$.

**Equation C402-3
Target $SHGCA_t$**

$SHGCA_t = SHGC_{ogt}(A_{ogort}) + SHGC_{vgt}(A_{ogt} + A_{vgt} + A_{vgmt} + A_{vgmot} + A_{vgdt})$

Where:

$SHGCA_t$ = The target combined ((specific)) solar heat gain of the target fenestration area.

$SHGC_{ogt}$ ≡ The solar heat gain coefficient for skylight fenestration found in Table C402.3, and A_{ogt} , as defined in Equation C402-1.

$SHGC_{vgt}$ = The solar heat gain coefficient for vertical fenestration found in Table C402.3 which corresponds to the proposed total fenestration area as a percent of gross exterior wall area, and ((A_{ogt})) A_{vgt} , A_{vgmt} , A_{vgmot} and A_{vgdt} are defined under Equation C402-1. Buildings utilizing Section C402.3.1.3 shall use the SHGC value specified there. The SHGC may be adjusted for projection factors per the requirements of Section C402.3.3.

NOTE: The vertical fenestration area does not include opaque doors and opaque spandrel panels.

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-402134 Equation C402-4—Proposed $SHGCA_p$.

**Equation C402-4
Proposed $SHGCA_p$**

$SHGCA_p = SHGC_{og}A_{og} + SHGC_{vg}A_{vg}$

Where:

$SHGCA_t$ = The combined proposed ((specific)) solar heat gain of the proposed fenestration area.

$SHGC_{og}$ = The solar heat gain coefficient of the skylights.

A_{og} = The skylight area.

$SHGC_{vg}$ = The solar heat gain coefficient of the vertical fenestration.

A_{vg} = The vertical fenestration area.

NOTE: The vertical fenestration area does not include opaque doors and opaque spandrel panels.

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-40231 Section C402.3.1—Maximum area.

C402.3.1 Maximum area. The vertical fenestration area (not including opaque doors and opaque spandrel panels) shall not exceed 30 percent of the gross above-grade wall area. The skylight area shall not exceed 3 percent of the gross roof area.

C402.3.1.1 Increased vertical fenestration area with daylighting controls. In Climate Zones 1 through 6, a maximum of 40 percent of the gross above-grade wall area shall be permitted to be vertical fenestration, provided:

1. No less than 50 percent of the conditioned floor area is within a daylight zone;

2. Automatic daylighting controls are installed in daylight zones; and

3. Visible transmittance (VT) of vertical fenestration is greater than or equal to 1.1 times solar heat gain coefficient (SHGC).

EXCEPTION: Fenestration that is outside the scope of NFRC 200 is not required to comply with Item 3.

C402.3.1.2 Increased skylight area with daylighting controls. The skylight area shall be permitted to be a maximum of 5 percent of the roof area provided automatic daylighting controls are installed in daylight zones under skylights.

C402.3.1.3 Increased vertical fenestration area with high-performance fenestration. The vertical fenestration area (not including opaque doors and opaque spandrel panels) is permitted to exceed 30 percent but shall not exceed 40 percent of the gross above grade wall area, for the purpose of prescriptive compliance with Section C402.1.2 or for the Target UA calculation in Equation C402-1, provided that each of the following conditions are met:

1. The vertical fenestration shall have the following U-factors:

a. Nonmetal framing (all) = 0.28

b. Metal framing (fixed) = 0.34

c. Metal framing (operable) = 0.36

d. Metal framing (entrance doors) = 0.60

2. The SHGC of the vertical fenestration shall be less than or equal to 0.35, adjusted for projection factor in compliance with C402.3.3.1.

The compliance path described in this section is not permitted to be used for the Total Building Performance compliance path in Section C407.

WSR 13-14-086

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 1, 2013, 12:14 p.m., effective July 1, 2013, 12:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The amendments under this filing incorporate the benefit level for the state-funded food assistance program (FAP) for legal immigrants under the approved 2013-2015 biennial operating budget (2ESSB 5034). RCW 74.08A.120 provides that the legislature shall set the benefit level for FAP in the biennial operating budget.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0050.

Statutory Authority for Adoption: RCW 74.08A.120.

Other Authority: State of Washington 2013-2015 biennial operating budget.

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

Reasons for this Finding: The biennial operating budget (2ESSB 5034) has changed the benefit level for the state-funded FAP under RCW 74.08A.120. The agency detail for the proposed budget compromise on the striking amendment to S-3053 to 2ESSB 5034 on page 143 states that funding is provided to bring the state food assistance benefit to seventy-five percent of the federal supplemental nutrition assistance program benefit level.

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

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

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

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

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

Date Adopted: July 1, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

WAC 388-400-0050 If I am not eligible for federal benefits through Washington Basic Food program because of my alien status, can I receive benefits through the state-funded food assistance program? (1) If you are not eligible for federally funded Basic Food benefits solely because you do not meet the alien status requirements under WAC 388-424-0020, you may be eligible for the state-funded food assistance program (FAP) if you meet both of the following requirements:

(a) You are a Washington state resident; and

(b) You meet the alien status requirements under WAC 388-424-0030.

(2) FAP follows the same eligibility rules as federally funded Basic Food except for rules related to alien status. A summary of the rules for Basic Food is found in WAC 388-400-0040.

(3) Benefits for FAP are set by the biennial state operating budget as described in RCW 74.08A.120(3). These benefits are calculated as described in subsections (4) and (5) of this section.

(4) If your assistance unit (AU) includes both people who are eligible for federally funded Basic Food benefits and people who are eligible for state-funded FAP benefits, we determine the amount of your federal and state food benefits by applying the following process:

(a) We calculate your AU's monthly benefits under WAC 388-450-0162 **as if** all the eligible persons in your AU could receive federally funded Basic Food benefits; and

(b) We then calculate your AU's monthly benefits under WAC 388-450-0162 for only the people in your AU who are eligible for federally funded benefits.

If (a) is more than (b)	If (b) is more than (a)
Your AU receives: • Basic Food benefits in the amount calculated using step (b); and • FAP benefits equal to ((half)) <u>three fourths</u> the difference between (a) and (b), rounded down to the next whole dollar.	Your AU receives Basic Food benefits in the amount calculated using step (b).

(5) If your AU only includes persons eligible for FAP, we determine the amount of your state-funded FAP benefits by:

(a) Applying the calculation for Basic Food under WAC 388-450-0162 as if all the persons in your AU were eligible to receive Basic Food; and

(b) Issuing FAP benefits to your AU equal to ~~((half))~~ three fourths the amount calculated in subsection (5)(a), rounded down to the next whole dollar.

**WSR 13-14-087
EMERGENCY RULES
STATE BOARD FOR COMMUNITY
AND TECHNICAL COLLEGES**

[Filed July 1, 2013, 1:29 p.m., effective July 1, 2013, 1:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Governing the certificate of educational competence.

Citation of Existing Rules Affected by this Order: Amending WAC 131-48-010 through and including WAC 131-48-140.

Statutory Authority for Adoption: RCW 28B.10.400.

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: Rule changes are required due to legislation (HB 1686) adopted during the 2013 regular session of the legislature that amended several RCWs to eliminate the reference to GED.

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

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

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

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

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

Date Adopted: June 20, 2013.

Beth Gordon
Executive Assistant
and Rules Coordinator

Chapter 131-48 WAC

HIGH SCHOOL EQUIVALENCY CERTIFICATE ((~~OF EDUCATIONAL COMPETENCE~~))

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

WAC 131-48-010 Authority. The authority for this chapter is RCW 28B.50.912 which authorizes the state board for community and technical colleges to adopt rules governing the eligibility of persons sixteen years of age or older to take the ~~((general educational development (GED)))~~ high school equivalency test subject to rules adopted by the state board of education.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

WAC 131-48-020 Purpose. The purpose of this chapter is to set forth policies and procedures governing the administration of the ~~((GED))~~ high school equivalency test and the issuance of high school equivalency certificates ~~((of educational competence))~~ for persons who have not graduated from high school and are not enrolled in a regular or alternative high school program.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

WAC 131-48-030 High school equivalency certificate ((~~of educational competence~~)). As used in this chapter, the term "high school equivalency certificate ~~((of educational competence))~~" means a certificate issued jointly by the state board for community and technical colleges and the superintendent of public instruction which indicates that the holder thereof has attained standard scores at or above the minimum proficiency level prescribed by the state board for community and technical colleges on the ~~((general educational development (GED)))~~ high school equivalency test, which is a measure of high school equivalency in the areas of writing skills, social studies, science, reading skills, and mathematics.

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

WAC 131-48-040 ((~~General educational development~~)) High school equivalency test—Definition. As used

in this chapter, the term "~~((general educational development)) high school equivalency test~~" means the most recent ~~((general educational development)) high school equivalency test~~ as determined by the authorizing agency.

AMENDATORY SECTION (Amending WSR 07-19-100, filed 9/18/07, effective 10/19/07)

WAC 131-48-050 Minimum proficiency level—Definition. Minimum proficiency level in Washington state is that set by ~~((GED Testing Service, part of the American Council on Education))~~ the state board for community and technical colleges.

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

WAC 131-48-060 Official ~~((GED)) high school equivalency testing center—Definition.~~ As used in this chapter, the term "official ~~((GED)) high school equivalency testing center~~" means public or private agencies which have agreed to comply with the provisions of this chapter and with policies and regulations of the ~~((GED Testing Service)) test publisher~~, and which have been designated by the state board for community and technical colleges, administrator of the ~~((GED)) high school equivalency testing program~~ to administer the ~~((general educational development)) high school equivalency test~~. Additional official ~~((GED)) high school equivalency testing centers~~ and local ~~((GED)) examiners~~ shall be approved by the state administrator of the ~~((GED)) high school equivalency testing program~~ at the state board for community and technical colleges when the following have been documented:

- (1) Need for a new testing site in a specific region or location;
- (2) Need for new or replacement examiner at a testing center;
- (3) Commitment of the governing board or, if none, the chief official of the proposed new testing center to meet all testing center requirements described ~~((in the GED Examiner's Manual published by GED Testing Service of the American Council on Education))~~ by the test publisher; and
- (4) Availability of testing center personnel who meet the qualifications specified ~~((in the GED Examiner's Manual published by the GED Testing Service))~~ by the test publisher as determined by the authorizing agency.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

WAC 131-48-080 Compliance with rules. Testing centers shall comply with the requirements of the testing program, and administer ~~((GED)) high school equivalency tests~~ only to those who have reached the age of nineteen unless an applicant who is sixteen, seventeen, or eighteen years of age has been adjudged by a school district official in accordance with rules of the state board of education to have a substantial and warranted reason for leaving the regular high school program.

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

WAC 131-48-100 Eligibility to take the ~~((GED)) high school equivalency test.~~ The following individuals shall be eligible to take the ~~((general educational development)) high school equivalency test~~ in official ~~((GED)) high school equivalency testing centers~~, provided that they are not enrolled in public, private, or home-based instruction of high school or a high school completion program at the time the test is administered:

- (1) Any person age nineteen or over who has not graduated from a public or private high school.
- (2) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school and who has been adjudged by a school district in accordance with rules of the state board of education to have a substantial and warranted reason for leaving the regular high school education program.
- (3) Any student age sixteen or over who has completed an education center individual student program in accordance with the provisions of chapter 392-185 WAC.
- (4) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school, and who has completed a program of home-based instruction in compliance with RCW 28A.225.010(4) as certified by the written and notarized statement of the parent(s) or legal guardian(s) who provided the home-based instruction.
- (5) Any person who is an active member of the military, national guard, or reserves and has not received a high school diploma.
- (6) Adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and other corrections facilities while enrolled in school if so ordered by a court or officer of the court.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

WAC 131-48-110 Eligibility for award of high school equivalency certificate ~~((of educational competence))~~. The high school equivalency certificate ~~((of educational competence))~~ shall be awarded jointly by the state board for community and technical colleges and the superintendent of public instruction to persons who achieve the minimum proficiency level on the ~~((general educational development)) high school equivalency test~~ and who meet the following:

- (1) Are residents of Washington state; and
- (2) Are nineteen years of age or older on the date of issuance; or
- (3) Have been adjudged by a district as possessing a substantial and warranted reason for leaving the regular high school education program.
- (4) Have completed a program of home-based instruction in compliance with RCW 28A.225.010(4) and chapter 28A.220 RCW.
- (5) Are active members of the military, national guard, or reserves.
- (6) Are adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and

other corrections facilities and so ordered by a court or officer of the court.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

WAC 131-48-120 Identification necessary to take the ((~~GED~~) high school equivalency test. All persons taking the ((~~GED~~) high school equivalency test must provide picture identification utilizing one of the following:

- (1) State-issued driver's license or a state-issued identification card with a photograph.
- (2) United States passport.
- (3) Certificate of United States citizenship.
- (4) Certificate of naturalization.
- (5) Unexpired foreign passport.
- (6) Alien registration card with photograph.
- (7) Armed forces identification card.
- (8) Other forms of comparable identification which the ((~~GED~~) examiner judges to be credible including, but not limited to, one or more of the following:
 - (a) Other forms of picture identification;
 - (b) Birth certificates in combination with other sources that confirm identity; and
 - (c) Confirmation of identity by a law enforcement, social service, or penal agency.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

WAC 131-48-140 Effect of high school equivalency certificate ((~~of educational competence~~)). The award by the state board for community and technical colleges and superintendent of public instruction of a high school equivalency certificate ((~~of educational competence~~)) shall not preclude such persons from returning to high school to obtain a regular high school diploma if changes in the person's personal situation allow completion of a regular high school education program. ((~~However, the GED certificate or test scores may not be used as a means of awarding academic credit (e.g., Carnegie units) or as part or all of the requirements for completing the regular high school diploma.~~))

Receipt of a high school equivalency certificate ((~~of educational competence~~)) also shall not preclude such persons from enrolling in an adult high school completion program at one of the state's community or technical colleges. ((~~However, the GED certificate or test scores may not be used as a means of awarding academic credit or as part or all of the requirements for completing the adult high school completion program and receiving the adult high school diploma.~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 131-48-070 Restrictions on use of general educational development tests.
- WAC 131-48-090 Annual contracts.

WAC 131-48-130 Application form for certificate of educational competence.

WSR 13-14-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-140—Filed July 2, 2013, 9:03 a.m., effective July 3, 2013]

Effective Date of Rule: July 3, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Yakama Nation and Washington department of fish and wildlife are continuing the reintroduction of anadromous (sea-going) sockeye salmon in the upper Cle Elum Basin that began in 2009. Very few, if any, anadromous adult sockeye will be smaller than sixteen inches, and few landlocked kokanee are greater than twelve inches. Therefore, a fourteen-inch maximum size limit will allow kokanee fisheries in both lakes to proceed without risking harvest of adult sockeye dedicated to the reintroduction effort and needed for natural spawning in the fall. The seven-inch minimum size for retention will protect juvenile anadromous sockeye rearing in the two lakes from being inadvertently harvested before they smoltify and migrate to the ocean. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 2, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir). Notwithstanding the provisions of WAC 232-28-619, effective July 3, 2013, until further notice, in waters of Cle Elum and Cooper Lakes, minimum size for kokanee is 7 inches in length and maximum size is 14 inches in length.

WSR 13-14-109

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed July 2, 2013, 3:50 p.m., effective July 2, 2013, 3:50 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This order will extend suspension of fees in an effort to maintain a balanced budget for the architect licensing program. The current temporary suspension expired on July 1, 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 308-12-205 Architect fees.

Statutory Authority for Adoption: RCW 18.220.040.

Other Authority: RCW 43.24.086.

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

Reasons for this Finding: The temporary suspension of architect fees expired on July 1, 2013, and it is being extended by this rule filing. This emergency rule is necessary to avoid an audit exception or a disruption to the architect program and will be followed by a permanent rule filing.

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

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

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

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

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

Date Adopted: July 2, 2013.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-205 Architect fees. (1) Suspension of fees. Effective July 1, (~~2014~~) 2013, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Title of Fee	Fee
Individuals:	
Examination application	\$50.00
Reciprocity application	250.00
Initial licensure	75.00
License renewal (2 years)	75.00
Late renewal penalty	25.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	100.00
Certificate of authorization renewal	50.00

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, (~~2013~~) 2015.

(2) The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Examination application	\$100.00
Reciprocity application	390.00
Initial licensure	99.00
License renewal (2 years)	99.00
Late renewal penalty	33.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	278.00
Certificate of authorization renewal	139.00

WSR 13-14-117

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed July 3, 2013, 9:33 a.m., effective July 3, 2013, 9:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Strike subsection (5) of WAC 182-557-0050 Health home—General.

Citation of Existing Rules Affected by this Order: Amending WAC 182-557-0050.

Statutory Authority for Adoption: RCW 41.05.021, SSB 5394.

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 language in WAC 182-557-0050(5) is not approved by the Centers for Medicare and Medicaid Services in the agency's state plan. State receipt of federal funds could be jeopardized without immediate adoption of this 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 3, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-12-002, filed 5/22/13, effective 7/1/13)

WAC 182-557-0050 Health home—General. (1) The agency's health home program provides patient-centered care to beneficiaries who:

(a) Have a least one chronic condition as defined in WAC 182-557-0100;

(b) Be at risk of a second chronic condition with a minimum predictive risk score of 1.5; and

(c) Are at risk for high health costs, avoidable admissions to institutional care settings, and poor health outcomes.

(2) Health homes offer six care coordination activities to assist the beneficiary in self-managing his or her condition and navigating the health care system:

(a) Comprehensive or intensive care management including, but not limited to, assessing participant's readiness for self-management, promoting self-management skills, coordinating interventions tailored to meet the beneficiary's needs, and facilitating improved outcomes and appropriate use of health care services;

(b) Care coordination and health promotion;

(c) Comprehensive transitional care between care settings including, but not limited to, after discharge from an inpatient facility (hospital, rehabilitative, psychiatric, skilled nursing, substance use disorder treatment or residential habilitation setting);

(d) Individual and family support services to provide health promotion, education, training and coordination of covered services for beneficiaries and their support network;

(e) Referrals to community and support services; and

(f) Use of health information technology (HIT) to link services between the health home and beneficiaries' providers.

(3) The agency's health home program does not:

(a) Change the scope of services for which a beneficiary is eligible under medicare or a Title XIX medicaid program;

(b) Interfere with the relationship between a beneficiary and his or her chosen agency-enrolled provider(s);

(c) Duplicate case management activities the beneficiary is receiving from other providers or programs; or

(d) Substitute for established activities that are available through programs administered through the agency or other state agencies.

(4) Qualified health home providers must:

(a) Contract with the agency to provide services under this chapter to eligible beneficiaries;

(b) Accept the terms and conditions in the agency's contract;

(c) Be able to meet the network and quality standards established by the agency;

(d) Accept the rates established by the agency; and

(e) Comply with all applicable state and federal requirements.

~~((5) The agency reserves the right to not contract with any otherwise qualified health home provider.))~~