

WSR 14-10-042
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 30, 2014, 7:14 a.m., effective April 30, 2014, 7:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These amendments are already in effect via emergency rule making filed on December 31, 2013, as WSR 14-02-096. Amendments in Title 388 WAC remove medical references, support the creation of the housing and essential needs (HEN) referral program and remove references to the Alcohol and Drug Addiction Treatment and Support Act (ADATSA). 2E2SHB 1738, Laws of 2011, designated the health care authority (HCA) as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. HCA recodified medical assistance program rules to Title 182 WAC. Accordingly, the department must eliminate corresponding rules and medical references under Title 388 WAC. Amendments support the creation of the new HEN referral program created under SHB 2069 (2013 legislative session). Amendments also remove references related to ADATSA. The legislature did not appropriate any funds for ADATSA in the new biennium budget. ADATSA related medical care services recipients are medicaid eligible under the Affordable Care Act (ACA) starting January 1, 2014. Additional amendments spell out the acronym, ABD, identifying it as the aged, blind or disabled program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0005, 388-406-0035, 388-406-0045, 388-406-0055, 388-418-0005, 388-424-0010, 388-424-0015, 388-436-0030, 388-450-0015, 388-450-0025, 388-450-0040, 388-450-0156, 388-450-0162, 388-450-0170, 388-472-0005, and 388-473-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011; SHB 2069; and RCW 41.05.021, 74.04.050, 74.08.-090, 74.09.035, 74.09.530, and the 2013 biennial budget.

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

Reasons for this Finding: Amendments remove medical references. More specifically, 2E2SHB 1738, Laws of 2011, designated HCA as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. DSHS worked with HCA to repeal medical assistance program rules under Title 388 WAC in support of HCA's efforts to recodify medical assistance program rules under Title 182 WAC. HCA recodified medical assistance program rules at Title 182 WAC, effective October 1, 2013. Accordingly, the department must eliminate corresponding rules under Title 388 WAC. Amendments remove references to the ADATSA program. The legislature did not appropriate any funds for ADATSA in the new biennium budget. ADATSA-related medical care services recipient[s] will be medicaid eligible under the ACA starting January 1,

2014. Amendments support the creation of the new HEN referral program created under SHB 2069, which was signed by the governor on June 30, 2013.

The department is in the process of proposing amendments to these rules permanently via the regular rule-making process. Amendments to WAC 388-406-0055 were proposed in WSR 14-07-101 and are scheduled for a public hearing on April 22, 2014. The department is currently working on proposing amendments to the other WACs.

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 16, 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 16, Repealed 0.

Date Adopted: April 21, 2014.

Katherine I. Vasquez
Rules Coordinator

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

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

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

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

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

- (i) A dependent child;
- (ii) An incapacitated person; or
- (iii) Someone who is deceased.

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

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

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

- (a) You temporarily live out-of-state; and
- (b) You are a Washington state resident.

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

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

- (i) Department of corrections;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Medical documentation;

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

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

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

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

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

WAC 388-406-0055 When do my benefits start? The date we approve your application affects the amount of benefits you get. If you are eligible for:

(1) Cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day for TANF, SFA, PWA, or RCA; or

(c) No later than the forty-fifth day for aged, blind, or disabled (ABD) cash assistance unless:

(i) You are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a) on the forty-fifth day, in which case your benefits will start on the date you are released from confinement; or

(ii) You are approved for ABD cash assistance at the time of your ~~((medical care services (MCS)))~~ housing and essential needs (HEN) referral incapacity review as described in WAC ~~((182-508-0160))~~ 388-447-0110, in which case your benefits will start on the date you provided sufficient medical evidence to establish disability as defined in WAC 388-449-0001.

(2) Basic Food, your benefits start from the date you applied unless:

(a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;

(b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:

(i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or

(ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.

(c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the date you provide the required verification. We start your benefits from this date even if we denied your application for Basic Food.

(d) We initially denied your application for Basic Food and your assistance unit (AU) becomes categorically eligible (CE) within sixty days from the date you applied. If your AU becoming CE under WAC 388-414-0001 makes you eligible for Basic Food, the date we approve Basic Food is the date your AU became CE.

(e) You are approved for transitional food assistance under chapter 388-489 WAC. We determine the date transitional benefits start as described under WAC 388-489-0015.

(f) You receive transitional food assistance with people you used to live with, and are now approved to receive Basic Food in a different assistance unit:

(i) We must give the other assistance unit ten days notice as described under WAC 388-458-0025 before we remove you from the transitional food assistance benefits.

(ii) Your Basic Food benefits start the first of the month after we remove you from the transitional benefits. For example, if we remove you from transitional benefits on November 30th, you are eligible for Basic Food on December 1st.

~~((3) Medical assistance, the date your benefits start is stated in chapter 388-416 WAC.~~

~~(4) For long term care, the date your services start is stated in WAC 388-106-0045.)~~

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

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

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

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

~~(i) Residence;~~

~~(ii) Marital status;~~

~~(iii) Living arrangement;~~

~~(iv) Income;~~

~~(v) Resources;~~

~~(vi) Medical expenses; and~~

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

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

~~((i) You move;~~

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

~~(iii) Your resources change; or~~

~~(iv) Your income changes. This includes the income of you, your spouse or your child living with you.~~

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

~~(i) You move;~~

~~(ii) Someone moves out of your home;~~

~~(iii) Your total gross monthly income goes over the:~~

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

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

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

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

~~(A) Get a job or change employers;~~

~~(B) Change from part-time to full-time or full-time to part-time;~~

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

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

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

~~((1))~~ (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

~~(i) You move;~~

~~(ii) The child you are caring for moves out of the home;~~

~~(iii) Anyone related to you or to the child you are caring for moves into or out of the home;~~

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

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

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

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

(viii) You legally adopt the recipient child.

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

~~(i) You move;~~

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

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

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

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

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

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

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

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

~~(i) You move; or~~

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

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

~~(i) You move; or~~

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

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

~~(i) You move; or~~

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

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

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

WAC 388-424-0010 Citizenship and alien status—Eligibility for TANF(~~medicaid, and CHIP~~). (1) To receive temporary assistance for needy families (TANF)(~~medicaid, or children's health insurance program (CHIP) benefits~~), an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A United States (U.S.) citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or
- (e) A nonqualified alien described in WAC 388-424-0001 who:
 - (i) Has verified their intent to stay in the United States indefinitely; and
 - (ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

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

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

- (a) TANF or SFA, unless the family has had its case grant terminated due to WAC 388-310-1600;
- (b) Pregnant women assistance (PWA);
- (c) RCA;
- (d) Aged, blind, or disabled (ABD) cash;
- (e) Supplemental security income (SSI);
- ~~((f)) Medical assistance for those applicants requesting help for a medical need;~~
- ~~((g)) (f) Food assistance for those applicants requesting help for a food need;~~
- ~~((h)) (g) Housing assistance from any available source for those applicants requesting help for a housing need;~~
- ~~((i)) (h) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.~~

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

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

- (a) Receiving cash benefits from any of the following programs:
 - (i) TANF/SFA;
 - (ii) PWA;
 - (iii) RCA;
 - (iv) DCA; or
 - (v) ABD cash.

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

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

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

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? This

section applies to cash assistance (~~(, children's, family, or pregnancy medical,))~~ and basic food benefits.

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

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

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

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

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

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

(f) Energy assistance payments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 388-450-0025 What is unearned income? This section applies to cash assistance((;)) and food assistance((; and medical programs for families, children, and pregnant women)).

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

- (a) Railroad retirement;
- (b) Unemployment compensation;
- (c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);
- (d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or
- (e) Veteran Administration benefits.

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

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

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

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

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

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

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

- (i) Interest; and
- (ii) Investment income accrued while such funds are held in trust.

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

- (i) Interest; and
- (ii) Investment income accrued while such funds are held in trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) You no longer live with your sponsor; and
- (ii) Leaving your sponsor caused your need for benefits.

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

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

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

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

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

(b) Your sponsor becomes permanently incapacitated; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Your sponsor's name; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) For **cash assistance**:

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

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

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

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

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

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

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

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

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income

over the gross income standard, but must have income under the net income standard to be eligible for benefits.

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

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

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

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

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

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

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

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

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

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

(a) The amount we subtract is:

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

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

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

Dependent Care Maximum Deductions

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

(b) In order to get this deduction:

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

(ii) You must verify the expense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Shelter costs;

(ii) Child or dependent care costs;

(iii) Child support that is legally obligated;

(iv) Medical expenses; and

(v) Self-employment expenses.

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

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

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

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

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

(h) Complete reports and reviews when asked;

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

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

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

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

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

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

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

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

WAC 388-473-0010 What are ongoing additional requirements and how do I qualify? "Ongoing additional requirement" means a need beyond essential food, clothing,

and shelter needs and is necessary to help you continue living independently.

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

- (a) Temporary assistance for needy families (TANF), or tribal TANF;
- (b) State family assistance (SFA);
- (c) Pregnant women assistance (PWA);
- (d) Refugee cash;
- (e) Aged, blind, or disabled (ABD) cash assistance; or
- (f) Supplemental security income (SSI).

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

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

- (a) The circumstances that create the need; and
- (b) How the need affects your health, safety and ability to continue to live independently.

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

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

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

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

WSR 14-11-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-101—Filed May 7, 2014, 12:01 p.m., effective May 7, 2014, 12:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000G; and amending WAC 220-310-200.

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

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

Reasons for this Finding: Reopens the 2014 spring recreational salmon season in the Columbia River from the Tongue Point/Rocky Point line upstream to Bonneville Dam for two additional retention days. The geographic area for the fishery has been reduced to omit the high-catch area in the gorge to help ensure catch will remain within the allowed guidelines. Harvestable upriver chinook remain on guideline based on the in-season run-size update of one hundred eighty-five thousand upriver chinook. The season from Bonneville Dam upstream to the Oregon/Washington border remains unchanged. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation also continues to allow for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery chinook. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 29 and May 6, 2014. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: May 7, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-310-20000H Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Columbia River:**

(a) Effective Friday May 9 and Saturday May 10, 2014:

(i) Open for fishing for salmonids and shad, from the Tongue Point/Rocky Point line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2).

(ii) HOWEVER, closed to fishing from boats upstream of Rooster Rock. Rooster Rock boundary defined as a true North/South line projected from Rooster Rock on the Oregon shore to the Washington shoreline.

(iii) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(iv) Release all wild Chinook and wild steelhead.

(v) Salmon minimum size is 12 inches.

(b) Effective immediately through May 9, 2014:

(i) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent rules).

(i) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(ii) Release all wild Chinook and wild steelhead.

(iii) Salmon minimum size is 12 inches.

(2) Deep River (Wahkiakum Co.): Effective immediately until June 15, 2014:

a. The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention.

b. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000G Freshwater exceptions to statewide rules—Columbia River. (14-81)

WSR 14-11-006

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 14-102—Filed May 7, 2014, 4:27 p.m., effective May 13, 2014, 12:01 a.m.]

Effective Date of Rule: May 13, 2014, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 7, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000M Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided in this section:

(1) Effective 12:01 a.m. May 14, 2014 through 11:59 a.m. May 18, 2014, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. May 13, 2014 through 11:59 a.m. May 20, 2014, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. May 16, 2014 through 11:59 a.m. May 18, 2014, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 a.m. May 17, 2014 through 11:59 a.m. May 18, 2014, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 20, 2014:

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

**WSR 14-11-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 14-104—Filed May 7, 2014, 4:56 p.m., effective May 9, 2014]

Effective Date of Rule: May 9, 2014.

Purpose: Amend commercial fishing rules.

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

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

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

Reasons for this Finding: Restrictions in Areas 3 and 4 are implemented to keep impacts within preseason planning limits for Puget Sound chinook. A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management

Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 7, 2014.

Philip Anderson
Director

NEW SECTION

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

(1) Salmon Management and Catch Reporting Areas 1 and 2 open: Immediately through June 30, 2014.

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

May 10 through May 13, 2014,
May 16 through May 20, 2014,
May 23 through May 27, 2014,
May 30 through June 3, 2014,
June 6 through June 10, 2014,
June 13 through June 17, 2014,
June 20 through June 24, 2014,
June 27 through June 30, 2014.

(a) Landing and possession limit of 50 Chinook per boat per each entire open period for the entire Catch Areas 3 and 4.

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

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

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

(e) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and

halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective May 9, 2014:

WAC 220-24-04000A All-citizen commercial salmon troll.

WSR 14-11-016 EMERGENCY RULES DEPARTMENT OF EARLY LEARNING

[Filed May 9, 2014, 8:40 a.m., effective May 9, 2014, 8:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To allow family home child care applicants another means of meeting the requirement to have education equivalent to a high school diploma, i.e., by completing the department of early learning (DEL) approved early childhood education initial certificate.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296A-1725.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: Emergency rules are needed to preserve the general welfare. Access to child care providers is lacking for many families across the state, with lack of providers a substantial contributing factor. Current education requirements for family home child care providers create a barrier to licensure for providers who demonstrate educational achievement by completing an early childhood education initial certificate, yet do not have a high school diploma or GED, twelve years of elementary and secondary education, a child development associate credential, or forty-five credits of post-secondary education. An emergency rule to allow that initial certificate to serve as "equivalent education" promotes access to care in accord with the general welfare. Observing the requirements of notice and comment rule making would be contrary to the public interest by delaying access. Further, emergency rules are needed to implement the appropriations enacted in the 2014 supplemental budget (chapter 221, Laws of 2014) funding the collective bargaining agreement between the state and SEIU Local 925 specifically regarding scholarships for SEIU 925 members. With that budget currently in effect, observation of notice and comment rule making is contrary to the fiscal needs of the agency.

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

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

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

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

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

Date Adopted: May 9, 2014.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 13-21-112, filed 10/22/13, effective 11/22/13)

WAC 170-296A-1725 Licensee minimum education.

(1) For any initial family home child care license issued on or after March 31, 2012, the applicant must have a high school diploma.

(2) If the applicant does not have a high school diploma, he or she must submit written evidence of equivalent education. As used in this section, "equivalent education" means:

(a) Passing the general educational development (GED) tests;

(b) Completion of twelve years of elementary and secondary education;

(c) Possessing a current child development associate (CDA) credential as approved through the council for professional recognition; ((or))

(d) Completion of forty-five credits of post secondary education; or

(e) Completion of the department approved early childhood education initial certificate.

(3) In addition to equivalent education defined within this section, a family home child care licensee licensed prior to March 31, 2012, and continuously maintaining the license may meet the "equivalent education" requirement by achieving a level three rating in the early achievers program, Washington state's quality rating improvement system, prior to March 31, 2017.

WSR 14-11-018

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed May 9, 2014, 10:23 a.m., effective May 9, 2014, 10:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These rules are necessary to: (1) Add new section for coverage of alcohol and substance misuse counseling through screening, brief intervention, and referral to treat-

ment (SBIRT); (2) new section for coverage for tobacco cessation counseling for pregnant clients; (3) add habilitative services under covered services; (4) remove oral health care services for emergency conditions for clients twenty-one and older from the covered section as a result of adult dental benefit restoration in chapter 182-535 WAC, effective January 1, 2014; (5) remove routine or nonemergency medical and surgical dental services for clients twenty-one years of age and older from the noncovered section; (6) update who can bill for physician-related and health care professional services; (7) add naturopathic physicians to list of who can bill for osteopathic manipulative treatment; (8) revise WAC 182-531-1400 psychiatric physician-related services and other professional mental health services to remove mental health parity; and (9) add new section for coverage of telemedicine.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-531-1025; and amending WAC 182-531-0100, 182-531-0150, 182-531-0250, 182-531-0800, 182-531-1050, and 182-531-1400.

Statutory Authority for Adoption: RCW 41.05.021; 3ESSB 5034 (section 213, chapter 4, Laws of 2013).

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

Reasons for this Finding: These emergency rules are necessary to continue the current emergency rule adopted under WSR 14-03-053 and meet the requirements in 3ESSB 5034, section 213, chapter 4, Laws of 2013, 63rd legislature, effective January 1, 2014. The agency filed a CR-101 under WSR 13-17-107 and began the permanent rule-making process. The agency has completed the internal review and plans to send the permanent rule draft to external review shortly.

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 2, Amended 5, 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 1, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 6, Repealed 1.

Date Adopted: May 9, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-035, filed 8/28/13, effective 9/28/13)

WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative. (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's ~~((medical assistance))~~ Washington apple health (WAH) program. Refer to WAC 182-501-0060 and 182-501-0065; and

(b) Medically necessary as defined in WAC 182-500-0070.

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC ~~((182-501-0065))~~ 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);

~~((b))~~ (b) Allergen immunotherapy services;

~~((c))~~ (c) Anesthesia services;

~~((d))~~ (d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);

~~((e))~~ (e) Emergency physician services;

~~((f))~~ (f) ENT (ear, nose, and throat) related services;

~~((g))~~ (g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);

~~((h))~~ (h) Habilitative services (refer to WAC 182-545-400);

~~((i))~~ (i) Reproductive health services (refer to chapter 182-532 WAC);

~~((j))~~ (j) Hospital inpatient services (refer to chapter 182-550 WAC);

~~((k))~~ (k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);

~~((l))~~ (l) Office visits;

~~((m))~~ (m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients twenty years of age and younger);

~~((n))~~ (n) Osteopathic treatment services;

~~((o))~~ (o) Pathology and laboratory services;

~~((p))~~ (p) Physiatry and other rehabilitation services (refer to chapter 182-550 WAC);

~~((q))~~ (q) Foot care and podiatry services (refer to WAC 182-531-1300);

~~((r))~~ (r) Primary care services;

~~((s))~~ (s) Psychiatric services ~~((provided by a psychiatrist))~~;

~~((t))~~ (t) Psychotherapy services ~~((for children as provided in))~~ WAC 182-531-1400;

~~((u))~~ (u) Pulmonary and respiratory services;

~~((v))~~ (v) Radiology services;

~~((w))~~ (w) Surgical services;

~~((v)) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment;~~

~~((w)) Oral health care services for emergency conditions for clients twenty-one years of age and older, except for clients of the division of developmental disabilities (refer to WAC 182-531-1025); and~~

~~((x)) Other outpatient physician services;~~ (x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment; and

(y) Other outpatient physician services.

(5) The agency covers physical examinations for ~~((medical assistance))~~ clients only when the physical examination is one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for a medical assistance program, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and ~~((agency issuances))~~ provider notices.

AMENDATORY SECTION (Amending WSR 13-16-008, filed 7/25/13, effective 9/1/13)

WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative. (1) Except as provided in WAC 182-531-0100 and subsection (2) of this section, the medicaid agency does not cover the following:

(a) Acupuncture, massage, or massage therapy;

(b) Any service specifically excluded by statute;

(c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;

(d) Hysterectomy performed solely for the purpose of sterilization;

(e) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness;

(f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;

(g) Hair transplantation;

(h) Marital counseling or sex therapy;

(i) More costly services when the medicaid agency determines that less costly, equally effective services are available;

(j) Vision-related services as follows:

(i) Services for cosmetic purposes only;

(ii) Group vision screening for eyeglasses; and
 (iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.

(k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;

(l) Physician-supplied medication, except those drugs administered by the physician in the physician's office;

(m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;

(n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:

(i) Routine foot care, such as but not limited to:

- (A) Treatment of tinea pedis;
- (B) Cutting or removing warts, corns and calluses; and
- (C) Trimming, cutting, clipping, or debriding of nails.

(ii) Nonroutine foot care, such as, but not limited to treatment of:

- (A) Flat feet;
- (B) High arches (cavus foot);
- (C) Onychomycosis;
- (D) Bunions and tailor's bunion (hallux valgus);
- (E) Hallux malleus;
- (F) Equinus deformity of foot, acquired;
- (G) Cavovarus deformity, acquired;
- (H) Adult acquired flatfoot (metatarsus adductus or pes planus);
- (I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services((-);

(p) Nonmedical equipment;

(q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas; and

(r) Bilateral cochlear implantation((-and

(s) Routine or nonemergency medical and surgical dental services provided by a doctor of dental medicine or dental surgery for clients twenty-one years of age and older, except for clients of the developmental disabilities administration in the department of social and health services)).

(2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

- (a) The EPSDT program;
- (b) A medicaid program for qualified **medicare** beneficiaries (QMBs); or
- (c) A waiver program.

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

WAC 182-531-0250 Who can provide and bill for physician-related and health care professional services.

~~((1) The following enrolled providers are eligible to provide and bill for physician-related and health care professional services which they provide to eligible clients:~~

- ~~(a) Advanced registered nurse practitioners (ARNP);~~
- ~~(b) Federally qualified health centers (FQHCs);~~
- ~~(c) Health departments;~~
- ~~(d) Hospitals currently licensed by the department of health;~~

~~(e) Independent (outside) laboratories **CLIA** certified to perform tests. See WAC 388-531-0800;~~

~~(f) Licensed marriage and family therapists, only as provided in WAC 388-531-1400;~~

~~(g) Licensed mental health counselors, only as provided in WAC 388-531-1400;~~

~~(h) Licensed radiology facilities;~~

~~(i) Licensed social workers, only as provided in WAC 388-531-1400 and 388-531-1600;~~

~~(j) Medicare-certified ambulatory surgery centers;~~

~~(k) Medicare-certified rural health clinics;~~

~~(l) Providers who have a signed agreement with the department to provide screening services to eligible persons in the EPSDT program;~~

~~(m) Registered nurse first assistants (RNFA); and~~

~~(n) Persons currently licensed by the state of Washington department of health to practice any of the following:~~

~~(i) Dentistry (refer to chapter 388-535 WAC);~~

~~(ii) Medicine and osteopathy;~~

~~(iii) Nursing;~~

~~(iv) Optometry; or~~

~~(v) Podiatry.)) (1) The health care professionals and health care entities listed in WAC 182-502-0002 and enrolled with the agency can bill for physician-related and health care professional services that are within their scope of practice.~~

~~(2) The department does not pay for services performed by any of the (following practitioners:~~

~~(a) Acupuncturists;~~

~~(b) Christian Science practitioners or theological healers;~~

~~(c) Counselors, except as provided in WAC 388-531-1400;~~

~~(d) Herbalists;~~

~~(e) Homeopaths;~~

~~(f) Massage therapists as licensed by the Washington state department of health;~~

~~(g) Naturopaths;~~

~~(h) Sanipractors;~~

~~(i) Social workers, except those who have a master's degree in social work (MSW); and:~~

~~(i) Are employed by an FQHC;~~

~~(ii) Who have prior authorization to evaluate a client for bariatric surgery; or~~

~~(iii) As provided in WAC 388-531-1400.~~

~~(j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC 388-502-0002; or~~

~~(k) Any other licensed practitioners providing services which the practitioner is not:~~

~~(i) Licensed to provide; and
(ii) Trained to provide))~~ health care professionals listed in WAC 182-502-0003.

(3) The ~~((department))~~ agency pays ~~((practitioners listed in subsection (2) of this section))~~ eligible providers for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:

- (a) The EPSDT program;
- (b) A medicaid program for qualified medicare beneficiaries (QMB); or
- (c) A waiver program.

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

WAC 182-531-0800 Laboratory and pathology physician-related services. (1) The ~~((department))~~ medicaid agency reimburses providers for laboratory services only when:

(a) The provider is certified according to Title XVII of the Social Security Act (medicare), if required; and

(b) The provider has a clinical laboratory improvement amendment (CLIA) certificate and identification number.

(2) The ~~((department))~~ agency includes a handling, packaging, and mailing fee in the reimbursement for lab tests and does not reimburse these separately.

(3) The ~~((department))~~ agency reimburses only one blood drawing fee per client, per day. The ~~((department))~~ agency allows additional reimbursement for an independent laboratory when it goes to a nursing facility or a private home to obtain a specimen.

(4) The ~~((department))~~ agency reimburses only one catheterization for collection of a urine specimen per client, per day.

(5) The ~~((department))~~ agency reimburses automated multichannel tests done alone or as a group, as follows:

(a) The provider must bill a panel if all individual tests are performed. If not all tests are performed, the provider must bill individual tests.

(b) If the provider bills one automated multichannel test, the ~~((department))~~ agency reimburses the test at the individual procedure code rate, or the internal code maximum allowable fee, whichever is lower.

(c) Tests may be performed in a facility that owns or leases automated multichannel testing equipment. The facility may be any of the following:

- (i) A clinic;
- (ii) A hospital laboratory;
- (iii) An independent laboratory; or
- (iv) A physician's office.

(6) The ~~((department))~~ agency allows a **STAT** fee in addition to the maximum allowable fee when a laboratory procedure is performed STAT.

(a) The ~~((department))~~ agency reimburses STAT charges for only those procedures identified by the clinical laboratory advisory council as appropriate to be performed STAT.

(b) Tests generated in the emergency room do not automatically justify a STAT order, the physician must specifically order the tests as STAT.

(c) Refer to the fee schedule for a list of STAT procedures.

(7) The ~~((department))~~ agency reimburses for drug screen charges only when medically necessary and when ordered by a physician as part of a total medical evaluation.

(8) The ~~((department))~~ agency does not reimburse for drug screens for clients in the division of alcohol and substance abuse (DASA)-contracted methadone treatment programs. These are reimbursed through a contract issued by DASA.

(9) The ~~((department))~~ agency does not cover for drug screens to monitor ~~((any of the following:~~

~~(a))~~ for program compliance in either a residential or outpatient drug or alcohol treatment program~~(;~~

~~(b) Drug or alcohol abuse by a client when the screen is performed by a provider in private practice setting; or~~

~~(c) Suspected drug use by clients in a residential setting, such as a group home)).~~

(10) The ~~((department))~~ agency may require a drug or alcohol screen in order to determine a client's suitability for a specific test.

(11) An independent laboratory must bill the ~~((department))~~ agency directly. The ~~((department))~~ agency does not reimburse a medical practitioner for services referred to or performed by an independent laboratory.

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

WAC 182-531-1050 Osteopathic manipulative treatment. (1) The ~~((department reimburses))~~ medicaid agency pays for osteopathic manipulative therapy (OMT) only when ~~((OMT is))~~

~~(a) Provided by an osteopathic physician licensed under chapter 18.71 RCW~~~~(;~~

~~(2) The department reimburses OMT only when the provider bills))~~ or naturopathic physicians licensed under chapter 246-836 WAC; and

~~(b) Billed~~ using the appropriate CPT codes that involve the number of body regions involved.

~~((3))~~ (2) The ((department)) agency allows an osteopathic physician or naturopathic physician to bill the ~~((department))~~ agency for an evaluation and management (E&M) service in addition to the OMT when one of the following apply:

(a) The physician diagnoses the condition requiring manipulative therapy and provides it during the same visit;

(b) The existing related diagnosis or condition fails to respond to manipulative therapy or the condition significantly changes or intensifies, requiring E&M services beyond those included in the manipulation codes; or

(c) The physician treats the client during the same encounter for an unrelated condition that does not require manipulative therapy.

~~((4))~~ (3) The ((department)) agency limits ~~((reimbursement))~~ payment for manipulations to ten per client, per calendar year. ~~((Reimbursement))~~ Payment for each manipulation includes a brief evaluation as well as the manipulation.

~~((5))~~ (4) The ~~((department))~~ agency does not ~~((reimburse))~~ pay for physical therapy services performed by osteopathic physicians or naturopathic physicians.

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

WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services.

~~((1))~~ The mental health services covered in the medical benefits described in this section are separate from the mental health services covered by the mental health managed care system administered under the authority of the mental health division pursuant to chapter 388-865 WAC. The department covers outpatient mental health services with the following limitations:

(a) For clients eighteen years of age and younger:

(i) The department pays for only one hour per day, per client, up to a total of twenty hours per calendar year, including the psychiatric diagnostic evaluation and family therapy visits that are medically necessary to the client's treatment;

(ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric advanced registered nurse practitioners (ARNP) in conjunction with the diagnostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and

(iii) The mental health services must be provided in an outpatient setting by a psychiatrist, psychologist, psychiatric ARNP, social worker, marriage and family therapist, or mental health counselor who must:

(A) Be licensed, in good standing and without restriction, by the department of health under their appropriate licensure; and

(B) Have a minimum of two years experience in the diagnosis and treatment of clients eighteen years of age and younger and their families, including a minimum one year under the supervision of a mental health professional trained in child and family mental health. A licensed psychiatrist may provide these services and bill the department without meeting this requirement.

(b) For clients nineteen years of age and older:

(i) The department pays for only one hour per day, per client, up to a total of twelve hours per calendar year, including family or group therapy visits;

(ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric ARNPs in conjunction with the diagnostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and

(iii) The mental health services must be provided by a psychiatrist in an outpatient setting.

(2) The department covers inpatient mental health services with the following limitations:

(a) Must be provided by a psychiatrist;

(b) Only the total time spent on direct psychiatric client care during each visit; and

(c) One hospital call per day for direct psychiatric client care, including making rounds. Making rounds is considered direct client care and includes any one of the following:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(3) With the exception of medication management, the department covers other mental health services described in this section with the limitation of one per client, per day regardless of location or provider type.

(4) The department pays psychiatrists when the client receives a medical physical examination in the hospital in addition to a psychiatric diagnostic or evaluation interview examination.

(5) The department covers psychiatric diagnostic interview evaluations at the limit of one per provider, per calendar year unless a significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the department.

(6) The department does not cover psychiatric sleep therapy.

(7) The department covers electroconvulsive therapy and narcoanalysis only when performed by a psychiatrist.

(8) The department pays psychiatric ARNPs only for mental health medication management and diagnostic interview evaluations provided to clients nineteen years of age and older.

(9) The department covers interactive, face-to-face visits at the limit of one per client, per day, in an outpatient setting. Interactive, face-to-face visits may be billed only for clients age twenty and younger.

(10) The client or licensed health care provider may request a limitation extension only when the client exceeds the total hour limit described in subsection (1) of this section; and for no other limitation of service in this section. The department will evaluate these requests in accordance with WAC 388-501-0169.

(11) DSHS providers must comply with chapter 388-865 WAC for hospital inpatient psychiatric admissions, and must follow rules adopted by the mental health division or the appropriate regional support network (RSN).

(12) Accepting payment under more than one contract or agreement with the department for the same service for the same client constitutes duplication of payment. If a client is provided services under multiple contracts or agreements, each provider must maintain documentation identifying the type of service provided and the contract or agreement under which it is provided to ensure it is not a duplication of service.)

(1) The mental health services covered in this section are different from the mental health services covered under chapter 388-865 WAC, community mental health and involuntary treatment programs administered by the department of social and health services' division of behavioral health and recovery.

(2) The medicaid agency covers professional inpatient and outpatient mental health services not covered under chapter 388-865 WAC according to this section.

Inpatient mental health services

(3) For hospital inpatient psychiatric admissions, providers must comply with the department of social and health services (DSHS) rules in chapter 388-865 WAC, Community mental health and involuntary treatment programs.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), or psychiatric mental health nurse practitioner-board certified (PMHNP-BC):

(b) One hospital call per day for direct psychiatric client care. The agency pays only for the total time spent on direct psychiatric client care during each visit, including services rendered when making rounds. The agency considers services rendered during rounds to be direct client care services and may include, but are not limited to:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosynthesis per client, per day when performed by a psychiatrist only.

Outpatient mental health services

(5) The agency covers outpatient mental health services when provided by the following licensed health care professionals in good standing with the agency and who are without restriction by the department of health under their appropriate licensure:

(a) Psychiatrist;

(b) Psychologists;

(c) Psychiatric advanced registered nurse practitioner (ARNP) or psychiatric mental health nurse practitioner-board certified (PMHNP-BC);

(d) Mental health counselors;

(e) Independent clinical social workers;

(f) Advanced social workers; or

(g) Marriage and family therapists.

(6) With the exception of licensed psychiatrists and psychologists, qualified health care professionals who treat clients eighteen years of age and younger must have a minimum of two years' experience in the diagnosis and treatment of clients eighteen years of age and younger, including one year of supervision by a mental health professional trained in child and family mental health.

(7) The agency does not limit the total number of outpatient mental health visits the licensed health care professional can provide.

(8) The agency covers outpatient mental health services with the following limitations, subject to the provision of WAC 182-501-0169:

(a) One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency.

(b) One individual or family/group psychotherapy visit, with or without the client, per day, per client, per calendar year.

(c) One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP); or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(9) Clients enrolled in the alternative benefits plan (defined in WAC 182-500-0010) are eligible for outpatient mental health services when used as a habilitative service to treat a qualifying condition in accordance with WAC 182-545-400.

(10) The agency requires the appropriate place of service for mental health services. If the client meets the regional support network (RSN) access to care standards, or subsequent standards, the client must be referred to the RSN for an assessment and possible treatment.

(11) If during treatment there is an indication that the client meets the RSN access to care standards, an assessment must be conducted. This assessment may be completed by either a health care professional listed in subsection (5) of this section or a representative of the RSN.

(12) To support continuity of care, the client may continue under the care of the provider until an RSN can receive the client.

(13) After the client completes fifteen mental health visits under this benefit, the provider must submit to the agency a written attestation that the client has been assessed for meeting access to care standards.

(14) To be paid for providing mental health services, providers must bill the agency using the agency's current published billing instructions.

(15) The agency considers acceptance of multiple payments for the same client for the same service on the same date to be a duplication of payment. Duplicative payments may be recouped by the agency under WAC 182-502-0230. To prevent duplicative payments, providers must keep documentation identifying the type of service provided and the contract or agreement under which it is provided.

NEW SECTION**WAC 182-531-1710 Alcohol and substance misuse counseling.**

(1) The medicaid agency covers alcohol and substance misuse counseling through screening, brief intervention, and referral to treatment (SBIRT) services when delivered by, or under the supervision of, a qualified licensed physician or other qualified licensed health care professional within the scope of their practice.

(2) SBIRT is a comprehensive, evidence-based public health practice designed to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community health care settings: Primary care centers, hospital emergency rooms, and trauma centers.

(3) The following health care professionals are eligible to become qualified SBIRT providers to deliver SBIRT services or supervise qualified staff to deliver SBIRT services:

(a) Advanced registered nurse practitioners, in accordance with chapters 18.79 RCW and 246-840 WAC;

(b) Chemical dependency professionals, in accordance with chapters 18.205 RCW and 246-811 WAC;

(c) Licensed practical nurse, in accordance with chapters 18.79 RCW and 246-840 WAC;

(d) Mental health counselor, in accordance with chapters 18.225 RCW and 246-809 WAC;

(e) Marriage and family therapist, in accordance with chapters 18.225 RCW and 246-809 WAC;

(f) Independent and advanced social worker, in accordance with chapters 18.225 RCW and 246-809 WAC;

(g) Physician, in accordance with chapters 18.71 RCW and 246-919 WAC;

(h) Physician assistant, in accordance with chapters 18.71A RCW and 246-918 WAC;

(i) Psychologist, in accordance with chapters 18.83 RCW and 246-924 WAC;

(j) Registered nurse, in accordance with chapters 18.79 RCW and 246-840 WAC;

(k) Dentist, in accordance with chapters 18.260 and 246-817; and

(l) Dental hygienists, in accordance with chapters 18.29 and 246-815 WAC.

(4) To qualify as a qualified SBIRT provider, eligible licensed health care professionals must:

(a) Complete a minimum of four hours of SBIRT training; and

(b) Mail or fax the SBIRT training certificate or other proof of training completion to the agency.

(5) The agency pays for SBIRT as follows:

(a) Screenings, which are included in the reimbursement for the evaluation and management code billed;

(b) Brief interventions, limited to four sessions per client, per provider, per calendar year; and

(c) When billed by one of the following qualified SBIRT health care professionals:

(i) Advanced registered nurse practitioners;

(ii) Mental health counselors;

(iii) Marriage and family therapists;

(iv) Independent and advanced social workers;

(v) Physicians;

(vi) Psychologists;

(vii) Dentists; and

(viii) Dental hygienists.

(6) To be paid for providing alcohol and substance misuse counseling through SBIRT, providers must bill the agency using the agency's current published billing instructions.

NEW SECTION

WAC 182-531-1720 Tobacco cessation counseling.

(1) The medicaid agency covers tobacco cessation services when delivered by qualified providers through the agency contracted quitline or face-to-face office visits for tobacco cessation for pregnant clients.

(2) The agency pays for face-to-face office visits for tobacco cessation counseling for pregnant clients with the following limits:

(a) When provided by physicians, advanced registered nurse practitioners (ARNPs), physician assistants-certified (PA-Cs), naturopathic physicians, and dentists;

(b) Two cessation counseling attempts (or up to eight sessions) are allowed every twelve months. An attempt is defined as up to four cessation counseling sessions.

(3) To be paid for tobacco cessation counseling through SBIRT, providers must bill the agency using the agency's current published billing instructions.

NEW SECTION

WAC 182-531-1730 Telemedicine. (1) Telemedicine is when a health care practitioner uses HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) to deliver covered services that are within his or her scope of practice to a client at a site other than the site where the provider is located. Using telemedicine enables the health care practitioner and the client to interact in real-time communication as if they were having a face-to-face session. Telemedicine allows clients, particularly those in medically underserved areas of the state, improved access to essential health care services that may not otherwise be available without traveling long distances.

(2) The medicaid agency does not cover the following services as telemedicine:

(a) E-mail, telephone, and facsimile transmissions;

(b) Installation or maintenance of any telecommunication devices or systems; and

(c) Purchase, rental, or repair of telemedicine equipment.

(3) **Originating site.** An originating site is the physical location of the client at the time the health care service is provided. The agency pays the originating site a facility fee per completed transmission. Approved originating sites are:

(a) Clinics;

(b) Community settings;

(c) Homes;

(d) Hospitals – Inpatient and outpatient; and

(e) Offices.

(4) **Distance site.** A distant site is the physical location of the health care professional providing the health care service.

(5) Program-specific policies regarding the coverage of telemedicine can be found in the agency's billing instructions.

(6) To be paid for providing health care services via telemedicine, providers must bill the agency using the agency's current published billing instructions.

(7) If a health care professional performs a separately identifiable service for the client on the same day as the telemedicine service, documentation for both services must be clearly and separately identified in the client's medical record.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-531-1025 Oral health care services provided by dentists for clients age twenty-one and older—General.

WSR 14-11-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-106—Filed May 9, 2014, 11:54 a.m., effective May 10, 2014]

Effective Date of Rule: May 10, 2014.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-03000I; and amending WAC 220-33-030.

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

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

Reasons for this Finding: Rules allow sales of shad when caught under an experimental gear permit issued by the state of Oregon. Washington supports innovative fishing techniques for shad. Incidental impacts to nontarget species are expected to be minimal, and are covered in a biological opinion. This rule is consistent with requirements of the Endangered Species Act. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: May 9, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-33-03000I Commercial shad—Columbia River. Notwithstanding the provisions of WAC 220-33-030, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

Mainstem Columbia River

(1) Stipulations: Shad may be taken and sold for commercial purposes with experimental fishing gear. A permit issued by the State of Oregon as described in the Oregon Administrative Rule 635-006-0020 is required to use experimental gear types for shad. Conditions under which shad may

be taken and sold for commercial purposes will be specified in the permit.

(2) Area: SMCRA 1A-1E

(3) Season: May 10 through July 31, 2014

(4) Gear: experimental, including but not limited to purse seines

(5) Allowable sales: Only shad may be kept and sold. All salmonids, sturgeon, and nontarget species taken as incidental catch in operation of such gear shall immediately, with care and least possible injury, be released and transferred to the water without violence.

REPEALER

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

WAC 220-33-03000I Commercial shad—Columbia River.

WSR 14-11-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-105—Filed May 9, 2014, 2:54 p.m., effective May 9, 2014, 2:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: The Dosewallips River was omitted from the permanent rule filing amending recreational fishing rules for the 2014 season and WAC reorganization. This emergency rule is interim until the permanent rule takes effect.

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

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

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

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

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

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

Date Adopted: May 9, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-310-19000C Freshwater exceptions to statewide rules—Dosewallips River. Notwithstanding the provisions of WAC 220-310-190, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

Dosewallips River (Jefferson Co.), from the mouth to Olympic National Park boundary about three-quarters of a mile downstream of falls:

- (1) Gamefish: Open June 7 through August 31, 2014.
- (2) Catch and release only.
- (3) Selective gear rules apply.
- (4) It is unlawful to fish from a floating device equipped with an internal combustion motor.

REPEALER

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

WAC 220-310-19000C Freshwater exceptions to statewide rules—Dosewallips River.

**WSR 14-11-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 14-108—Filed May 13, 2014, 4:57 p.m., effective May 13, 2014, 4:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000H; and amending WAC 220-310-200.

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

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

Reasons for this Finding: Reopens the 2014 spring recreational salmon season in the Columbia River from the Tongue Point/Rocky Point line upstream to Bonneville Dam for the remainder of the spring season. Harvestable upriver chinook remain on guideline based on the inseason runsize update of 224,000 upriver chinook. Sockeye retention is not allowed. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent

Columbia River when both areas are open. The regulation also continues to allow for the retention of hatchery steelhead and shad during days and in areas that are open for hatchery chinook. The fishery is consistent with the *U.S. v. Oregon Management Agreement* and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of May 13, 2014. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: May 13, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-310-20000I Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Columbia River:**

(a) Effective May 15 through June 15, 2014:

(i) Open for fishing for salmonids and shad from the Tongue Point/Rocky Point line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2).

(ii) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(iii) Release all sockeye, wild Chinook and wild steelhead.

(iv) Salmon minimum size is 12 inches.

(2) **Deep River (Wahkiakum Co.):** Effective immediately until June 15, 2014:

(a) The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention.

(b) When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000H Freshwater exceptions to statewide rules—Columbia River. (14-101)

WSR 14-11-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-109—Filed May 14, 2014, 10:59 a.m., effective May 20, 2014, 7:00 p.m.]

Effective Date of Rule: May 20, 2014, 7:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000R; and amending WAC 220-33-010.

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

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

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

Reasons for this Finding: Opens a mainstem commercial fishery in Zones 1-5. The upriver spring chinook run-size has been updated to 224,000 fish, which increases the number of fish available for harvest. This rule implements the "adaptive management" clause in Policy C-3620 by allowing the use of eight inch gear. With the increasing abundance of shad in the river the intercept rate of shad with tanglenet gear is exceedingly high. In an effort to maintain a high level of conservation, a fishing period with eight inch gear was allowed to minimize the interception of shad and therefore keep the drift time within the forty-five minute limit allowed. Upriver spring chinook mortalities are expected to remain within the ESA and catch balance limits allowed. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. This rule is consistent with compact action of January 29 and May 13, 2014. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: May 14, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000S Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Mainstem Columbia River

(a) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

(b) **Dates:** 7:00 p.m. May 20 to 5:00 a.m. May 21, 2014.

(c) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad.

(d) **Sanctuaries:** Grays River, Elochoman-B, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers, as applicable.

(e) **Gear:** Drift nets only. 8-inch minimum mesh: Net length not to exceed 150 fathoms.

(f) Miscellaneous:

(i) **Soak times** are defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, and must not exceed 45 minutes.

(ii) **Red corks** are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

(iii) **Recovery Box:** Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each chamber of the recovery box(es) must include

an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery.

(v) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live-capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live-capture certification.

(2) Deep River Select Area

(a) **Dates:** Monday and Thursday nights immediately through June 13, 2014. Open hours are 7 PM to 7 AM.

(b) **Area:** From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets only. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. It is permissible to use additional weights or anchors attached directly to the leadline.

Nets cannot be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of

the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules of the department (WAC 220-20-010(17)).

(d) **Allowable Possession:** Salmon and shad.

(e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(3) Tongue Point/South Channel

(a) **Dates:** Monday and Thursday nights from immediately through June 13, 2014. Open hours are 7:00 PM to 7:00 AM,

(b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets only. 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear is restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear is restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and it is permissible to use additional weights or anchors attached directly to the leadline.

(d) **Allowable Possession:** Salmon and shad.

(e) **Miscellaneous:** Fishers are required to call 971-230-8247 and leave a message including name, catch, and where and when fish will be sold. Permanent transportation rules apply.

(f) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday and Thursday nights immediately through June 13, 2014. Open hours are 7:00 PM to 7:00 AM.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The lower boundary of the Knappa Slough fishing area extends downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction

on leadline. It is permissible to use additional weights or anchors attached directly to the leadline is allowed.

(d) **Allowable Possession:** Salmon and shad.

(e) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

(5) For all fisheries described above (Sections 1-4):

(a) **24-hour** quick reporting is required for Washington buyers (WAC 220-69-240(14)(d)). Permanent transportation rules apply.

(b) **Multi net rule in effect:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

Lighted buoys required: Nets fished at times between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. May 20, 2014:

WAC 220-33-01000R Columbia River seasons below Bonneville. (14-99)

WSR 14-11-039

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 14-111—Filed May 14, 2014, 2:45 p.m., effective May 14, 2014, 2:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Based on the current harvest estimates and anticipated harvest through Tuesday of this

week, about 900-1,000 adult hatchery chinook are expected to have been harvested. In an effort to share the fisheries with the upper areas, the lower two areas (where most harvest has occurred) will close and the upper two areas, where few fish have been harvested, will remain open until further notice. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 14, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-310-19500J Freshwater exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 220-310-195, effective May 14, 2014, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) A person may fish for and possess salmon in the following waters of the Snake River from the downstream edge of the large power lines crossing the Snake River (just upstream from the West Evans Road on the south shore) upstream about 3.5 miles to the Washington state line (from the east levee of the Greenbelt boat launch in Clarkston northwest across the Snake River to the WA/ID boundary waters marker on the Whitman County shore). Open Thursday through Sunday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

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

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

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

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

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

(2) A person may fish for and possess salmon in waters of the Snake River from the south shore boat launch (Ilia boat launch) across to the mouth of Almot Creek upstream about

four miles to the restricted fishing area below Lower Granite Dam. Open Saturday through Tuesday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective May 14, 2014:

WAC 220-310-19500F Freshwater exceptions to statewide rules—Snake River. (14-82)

WSR 14-11-044

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 14-100—Filed May 15, 2014, 3:06 p.m., effective June 6, 2014, 6:00 p.m.]

Effective Date of Rule: June 6, 2014, 6:00 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000D; and amending WAC 220-310-180.

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

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

Reasons for this Finding: This rule change is necessary to ensure a safe and successful event. The fish will be planted one day prior to the annual kid's fishing derby to better acclimate them before the event. On the day of the event, only pre-registered kids will be allowed to participate in the derby but Lake Sylvia is open to fishing for everyone. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 15, 2014.

Nate Pamplin
for Philip Anderson
Director

NEW SECTION

WAC 220-310-18000D Exceptions to statewide rules—Lake Sylvia (Grays Harbor Co.) Notwithstanding the provisions of WAC 220-310-180, effective 6:00 p.m. June 6 through 5:59 a.m. June 7, 2014, it is unlawful to fish in waters of Lake Sylvia.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 7, 2014:

WAC 220-310-18000D Exceptions to statewide rules—
Lake Sylvia (Grays Harbor Co.)

WSR 14-11-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-110—Filed May 15, 2014, 3:07 p.m., effective May 15, 2014,
3:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend rules in the recreational spot shrimp fishery.

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

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

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

Reasons for this Finding: This rule is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available for one additional day of fishing in

Marine Areas 8-1 and 8-2. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 15, 2014.

Nate Pamplin
for Philip Anderson
Director

NEW SECTION

WAC 220-56-32500L Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective immediately through May 31, 2014, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6 (excluding the Discovery Bay Shrimp District) and 13 - Open through May 31.

(2) Marine Area 7 - Open May 21-24 and May 28-31.

(3) Marine Areas 8-1 and 8-2 - Open May 21 from 7:00 a.m. through 3:00 p.m., and divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on that open day in Marine Area 8-2.

(4) Marine Area 12 - Open May 21 from 9:00 a.m. through 1:00 p.m.

(5) Discovery Bay Shrimp District - Open May 21 from 7:00 a.m. through 3:00 p.m.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500K Shrimp—Areas and seasons. (14-65)

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

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

WSR 14-11-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-112—Filed May 15, 2014, 3:36 p.m., effective May 19, 2014,
 12:01 a.m.]

Effective Date of Rule: May 19, 2014, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-56-25500T; and amending WAC 220-56-255.

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

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

Reasons for this Finding: The Marine Area 2 recreational halibut fishery is projected to have taken the Pacific halibut quota set aside for the primary season by the end of the day May 18, 2014. A separate quota set aside is sufficient to continue to allow halibut fishing seven days per week in the northern nearshore area. This rule conforms to federal action taken by the National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 15, 2014.

Nate Pamplin
 for Philip Anderson
 Director

NEW SECTION

WAC 220-56-25500U Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective May 19, 2014, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open until further notice. Thursdays through Sundays. It is unlawful during any

vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 1 (Nearshore fishery)** Those waters from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long (then connecting to the 40 fathom depth contour in Oregon). Open until further notice, Mondays through Wednesdays. It is permissible to retain bottomfish while having halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2** - Open through May 18, 2014, Sundays and Tuesdays only. See (a) and (b) below for additional details.

(a) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47°31.70 N. lat, 124°37.03 W. long

47°25.67 N. lat, 124°34.79 W. long

47°12.82 N. lat, 124°29.12 W. long

47°58.00 N. lat, 124°24.24 W. long

(b) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(4) **Catch Record Card Areas 3 and 4** - Open through May 24, 2014, Thursdays and Saturdays only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(a) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour. Except, on days open to the Pacific halibut fishery in these areas, lingcod, sablefish and Pacific cod can be retained seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(b) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms). Except, on days open to the Pacific halibut fishery in this areas, lingcod, and Pacific cod can be retained seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

(5) **Catch Record Card Area 5** - Open May 22 through May 25, 2014, Thursday through Sunday. Open May 29 through May 31, 2014, Thursday through Saturday and open Saturday June 7, 2014. Halibut anglers are allowed to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open.

(6) **Catch Record Card Areas 6 and 7** - Open May 22 through May 25, 2014, Thursday through Sunday. Open May 29 through May 31, 2014, Thursday through Saturday and open Saturday June 7, 2014. Halibut anglers are allowed to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days that halibut fishing is open.

(7) **Catch Record Card Areas 8 through 10** - Open May 22 through May 25, 2014, Thursday through Sunday. Open May 29 through May 31, 2014, Thursday through Saturday and open Saturday June 7, 2014. Halibut anglers are allowed to retain lingcod caught while fishing for halibut in waters deeper than 120 feet on days that halibut fishing is open.

(8) **Catch Record Card Areas 11, 12, and 13** - Closed.

(9) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(10) It is unlawful to land halibut into a port closed to halibut.

(11) All other permanent rules remain in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. May 19, 2014:

WAC 220-56-25500T Halibut—Seasons—Daily and possession limits. (14-75)

WSR 14-11-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-103—Filed May 16, 2014, 10:01 a.m., effective May 17, 2014]

Effective Date of Rule: May 17, 2014.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: [No information supplied by agency.]

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: Upper Wheeler Reservoir is owned and operated by the Wenatchee Heights Reclamation District (WHRD) and has been closed to public access. Washington department of fish and wildlife (WDFW) has made arrangements with WHRD and the Wenatchee Valley Fly Fishers (WVFF) to grant public access to recreational anglers under "fly fishing only" regulations. The agreement includes fish stocking and a land-use agreement by WDFW, and site maintenance by the WVFF. While there are currently fifteen other fly fishing only waters throughout the state, there are no such waters currently open in Chelan County. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 16, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-310-19500I Exceptions to statewide rules—Upper Wheeler Reservoir. Notwithstanding the provisions of WAC 220-310-195, effective May 17 through September 12, 2014, it is permissible to fish in the waters of Upper Wheeler Reservoir subject to the following provisions:

(1) Fishing is open to fly fishing only.

(2) Trout: Catch and release only.

(3) All other game fish: Statewide minimum size and daily limits apply.

(4) It is unlawful to fish from a floating device equipped with a motor.

WSR 14-11-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-114—Filed May 16, 2014, 12:49 p.m., effective May 16, 2014, 12:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300I.

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

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

Reasons for this Finding: Sea urchin harvest quota shares have been taken in all districts. 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: May 16, 2014.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300I Sea urchins. (14-13)

WSR 14-11-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-113—Filed May 16, 2014, 1:05 p.m., effective May 19, 2014]

Effective Date of Rule: May 19, 2014.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: This emergency rule is needed to maintain an orderly fishery. Barbless hooks are required to aid in the release of incidentally caught wild steelhead. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 16, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-310-18500H Freshwater exceptions statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, May 19, 2014, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Drano Lake (Skamania County):** It is permissible for anglers with a Two-Pole Endorsement to fish for salmon and steelhead with two poles and each angler aboard a vessel may deploy salmon/steelhead angling gear until the daily salmon/steelhead limit for all anglers aboard has been achieved through June 30, 2014.

(2) **Kalama River (Cowlitz County):** From the boundary markers at the mouth to 1000 feet above fishway at the upper salmon hatchery (Kalama Falls), all Chinook must be released through July 31, 2014.

(3) **Lewis River (Clark/Cowlitz counties):** All Chinook must be released through July 31, 2014.

(4) **Lewis River, North Fork (Clark/Cowlitz counties):**

(a) From the mouth of East Fork to overhead powerlines below Merwin Dam, all chinook must be released through July 31, 2014.

(b) From Johnson Creek (located downstream from the Lewis River Salmon Hatchery) upstream to Merwin Dam, closed to all fishing through May 31, 2014.

(5) **Wind River (Skamania County):**

(a) From the mouth (boundary line markers) upstream to the Burlington Northern Railroad Bridge: Anglers with a Two-pole Endorsement may fish with two poles for salmon and steelhead and each angler aboard a vessel may deploy salmon/steelhead angling gear until the daily salmon/steelhead limit for all anglers aboard has been achieved through June 30, 2014.

(b) From 100 feet above Shipherd Falls to 800 yards downstream of Carson National Fish Hatchery (except closed waters from 400 feet below to 100 feet above coffer dam): Open to fishing for Chinook and hatchery steelhead through June 30, 2014. Barbless hooks required, night closure and anti-snagging rules are in effect. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(c) From the mouth to 400 feet below Shipherd Falls through July 31, 2014, and from 100 feet above Shipherd Falls to 800 yards downstream of Carson National Fish Hatchery through June 30, daily limit is 2 Chinook or 2 hatchery steelhead or one of each. Chinook minimum size is 12 inches. Release wild Chinook downstream of Shipherd Falls.

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 May 19, 2014:

WAC 220-310-18500G Freshwater exceptions statewide rules—Southwest. (14-84)

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

WSR 14-11-060

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed May 16, 2014, 4:50 p.m., effective May 16, 2014, 4:50 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This provision is intended to modify the number of plumbing fixtures needed to be installed in Group E occupancies.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-2900.

Statutory Authority for Adoption: [RCW 19.27.031 and 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: An earlier modification of this WAC section created an unintended financial impact on Washington school districts, and required them to install additional plumbing fixtures with no benefit to building occupants. This rule is necessary to reduce the financial burden on school districts.

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: May 9, 2014.

C. Ray Allshouse
Chair

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-2900 Chapter 29—Plumbing systems.

SECTION 2901—GENERAL.

2901.1 Scope. The provisions of this chapter and the state plumbing code shall govern the erection, installation, *alteration*, repairs, relocation, replacement, *addition* to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the state plumbing code.

2901.2 Health codes. In food preparation, serving and related storage areas, additional fixture requirements may be dictated by health codes.

SECTION 2902—MINIMUM PLUMBING FACILITIES.

2902.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 2902.1. Types of occupancies not shown in Table 2902.1 shall be determined individually by the *building official* based on the occupancy which most nearly resembles the proposed occupancy. The number of occupants shall be determined by this code. Occupancy classification shall be determined in accordance with Chapter 3. Plumbing fixtures need not be provided for unoccupied buildings or facilities.

2902.1.1 Fixture calculations. To determine the *occupant load* of each sex, the total *occupant load* shall be divided in half. To determine the required number of fixtures, the fixture ratio or ratios for each fixture type shall be applied to the *occupant load* of each sex in accordance with Table 2902.1. Fractional numbers resulting from applying the fixture ratios of Table 2902.1 shall be rounded up to the next whole number. For calculations involving multiple occupancies, such fractional numbers for each occupancy shall first be summed and then rounded up to the next whole number.

EXCEPTION: The total *occupant load* shall not be required to be divided in half where *approved* statistical data indicate a distribution of the sexes of other than 50 percent of each sex.

2902.1.1.1 Private offices. Fixtures only accessible to private offices shall not be counted to determine compliance with this section.

2902.1.1.2 Urinals. Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one quarter (25%) of the minimum specified. For men's facilities serving 26 or more persons, not less than one urinal shall be provided.

2902.1.2 Family or assisted-use toilet and bath fixtures. Fixtures located within family or assisted-use toilet and bathing rooms required by Section 1109.2.1 are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.

2902.2 Separate facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex.

EXCEPTIONS:

1. Separate facilities shall not be required for *dwelling units* and *sleeping units*.
2. Separate facilities shall not be required in structures or tenant spaces with a total *occupant load*, including both employees and customers, of 15 or less.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or less.

2902.2.1 Family or assisted-use toilet facilities serving as separate facilities. Where a building or tenant space requires a separate toilet facility for each sex and each toilet facility is required to have only one water closet, two family/assisted-use toilet facilities shall be permitted to serve as the required separate facilities. Family or assisted-use toilet facilities shall not be required to be identified for exclusive use by either sex as required by Section 2902.4.

2902.3 Employee and public toilet facilities. Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users. Employees shall be provided with toilet facilities in all occupancies. Employee toilet facilities shall either be separate or combined employee and public toilet facilities.

EXCEPTION: Public toilet facilities shall not be required in open or enclosed parking garages. Toilet facilities shall not be required in parking garages where there are no parking attendants.

2902.3.1 Access. The route to the public toilet facilities required by Section 2902.3 shall not pass through kitchens, food preparation areas, unpackaged food storage areas, storage rooms or closets. Access to the required facilities shall be from within the building or from the exterior of the building. Access to toilets serving multiple tenants shall be through a common use area and not through an area controlled by a tenant. All routes shall comply with the accessibility require-

ments of this code. The public shall have access to the required toilet facilities at all times that the building is occupied. For other requirements for plumbing facilities, see Chapter 11.

2902.3.1.1 Food preparation areas. Toilet rooms shall not open directly into a room used for the preparation of food for service to the public or residents of Group R-2 boarding homes and residential treatment facilities licensed by Washington state.

2902.3.2 Location of toilet facilities in occupancies other than malls. In occupancies other than covered and open mall buildings, the required *public* and employee toilet facilities shall be located in each building not more than one story above or below the space required to be provided with toilet facilities, or conveniently in a building adjacent thereto on the same property, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

EXCEPTION: The location and maximum travel distances to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum travel distance are *approved*.

2902.3.3 Location of toilet facilities in malls. In covered and open mall buildings, the required *public* and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 300 feet (91,440 mm). In mall buildings, the required facilities shall be based on total square footage (m²) within a covered mall building or within the perimeter line of an open mall building, and facilities shall be installed in each individual store or in a central toilet area located in accordance with this section. The maximum travel distance to central toilet facilities in mall buildings shall be measured from the main entrance of any store or tenant space. In mall buildings, where employees' toilet facilities are not provided in the individual store, the maximum travel distance shall be measured from the employees' work area of the store or tenant space.

2902.3.4 Pay facilities. Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

2902.3.5 Door locking. Where a toilet room is provided for the use of multiple occupants, the egress door for the room shall not be lockable from the inside of the room. This section does not apply to family or assisted-use toilet rooms.

2902.4 Signage. Required public facilities shall be designated by a legible sign for each sex. Signs shall be readily visible and located near the entrance to each toilet facility. Signs for accessible toilet facilities shall comply with Section 1110.

2902.4.1 Directional signage. Directional signage indicating the route to the public facilities shall be posted in accordance with Section 3107. Such signage shall be located in a *corridor* or aisle, at the entrance to the facilities for customers and visitors.

2902.5 Drinking fountain location. Drinking fountains shall not be required to be located in individual tenant spaces provided that public drinking fountains are located within a travel distance of 500 feet of the most remote location in the tenant space and not more than one story above or below the tenant space. Where the tenant space is in a covered or open mall, such distance shall not exceed 300 feet. Drinking fountains shall be located on an accessible route. Drinking fountains shall not be located in toilet rooms.

2902.5.1 Drinking fountain number. Occupant loads over 30 shall have one drinking fountain for the first 150 occupants, then one per each additional 500 occupants.

- EXCEPTIONS:
1. Sporting facilities with concessions serving drinks shall have one drinking fountain for each 1000 occupants.
 2. A drinking fountain need not be provided in a drinking or dining establishment.

2902.5.2 Multistory buildings. Drinking fountains shall be provided on each floor having more than 30 occupants in

schools, dormitories, auditoriums, theaters, offices and public buildings.

2902.5.3 Penal institutions. Penal institutions shall have one drinking fountain on each cell block floor and one on each exercise floor.

2902.6 Dwelling units. Dwelling units shall be provided with a kitchen sink.

2902.7 Water closet space requirements. The water closet stool in all occupancies shall be located in a clear space not less than 30 inches (762 mm) in width, with a clear space in front of the stool of not less than 24 inches (610 mm).

2902.8 Water. Each required sink, lavatory, bathtub and shower stall shall be equipped with hot and cold running water necessary for its normal operation.

SECTION 2903—RESERVED.

SECTION 2904—RESERVED.

Table 2902.1
Minimum Number of Required Plumbing Fixtures*
(See Sections 2902.2 and 2902.3)

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathtubs /Showers
				Male	Female	Male	Female	
1	Assembly	A-1 ^d	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—
		A-2 ^d	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—
		A-3 ^d	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		—
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		—
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		—

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathrooms /Showers
				Male	Female	Male	Female	
		A-4	Coliseums, arenas, skating rinks, pools, and tennis courts for indoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	—
		A-5	Stadiums amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	—
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for first 80 and 1 per 80 for remainder exceeding 80		—
3	Educational	E	Educational facilities	1 per ((50)) <u>35</u>	1 per ((30)) <u>25</u>	1 per ((100)) <u>85</u>	1 per ((60)) <u>50</u>	—
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		Check State (UPC)
5	Institutional	I-1	Residential care	1 per 10		1 per 10		1 per 8
		I-2	Hospitals, ambulatory nursing home care recipient ^b	1 per room ^c		1 per room ^c		1 per 15
			Employees, other than residential care ^b	1 per 25		1 per 35		—
			Visitors other than residential care	1 per 75		1 per 100		—
		I-3	Prisons ^b	1 per cell		1 per cell		1 per 15

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs /Showers
				Male	Female	Male	Female	
			Reformatories, detention centers and correctional centers ^b	1 per 15		1 per 15		1 per 15
			Employees ^b	1 per 25		1 per 35		—
		I-4	Adult day care and child day care	1 per 15		1 per 15		1
6	Mercantile	M	Retail stores, service stations, shops, sales-rooms, markets and shopping centers	1 per 500		1 per 750		—
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit
		R-2	Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8
			Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit
		R-3	One- and two-family dwellings	1 per dwelling unit		1 per 10		1 per dwelling unit
			Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
		R-4	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		Check State (UPC)

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code, except with respect to Group E occupancies the provisions of note "e" shall apply.
- b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.
- c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.
- d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.
- e. For Group E occupancies: The number of occupants shall be determined by using a calculation of 100 square feet gross building area per student for the minimum number of plumbing fixtures.

WSR 14-11-061**EMERGENCY RULES****STATE BOARD OF EDUCATION**

[Filed May 16, 2014, 5:56 p.m., effective May 16, 2014, 5:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Because of the timeline for submitting data to the United States Department of Education for the state's ESEA flexibility waiver, the identification of required action schools by the superintendent of public instruction (SPI) for 2014 was delayed. It is necessary to extend the deadlines for submittal and approval of required action plans by districts to the SPI and the state board of education, for 2014 only, in order for districts to have sufficient time to complete the process for creating a required action plan.

Citation of Existing Rules Affected by this Order: Amending WAC 180-17-020 Process for submittal and approval of required action plan.

Statutory Authority for Adoption: RCW 28A.657.120.

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 legislature has found that it is the state's responsibility to create a coherent and effective accountability framework for the continuous improvement of all schools and for a specific group of lowest-achieving schools and their districts, and to provide a required action process to turn around the identified schools (RCW 28A.657.005). Immediate adoption is necessary in order for those districts designated by SPI in 2014 as required action districts to have sufficient time to complete a required action plan, a critical part of the turn-around process, and for approval of the plan by the state board of education.

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 1, Repealed 0.

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

Date Adopted: May 8, 2014.

Ben Rarick
Executive Director

AMENDATORY SECTION (Amending WSR 10-23-083, filed 11/16/10, effective 12/17/10)

WAC 180-17-020 Process for submittal and approval of required action plans. (1) Except as otherwise provided in WAC 180-17-030, and in subsection (5) of this section, school districts designated as required action districts by the state board of education shall develop a required action plan according to the following schedule:

(a) By April 15th of the year in which the district is designated, a school district shall submit a required action plan to the superintendent of public instruction to review and approve that the plan is consistent with federal guidelines for the receipt of a School Improvement Grant. The required action plan must comply with all of the requirements set forth in RCW 28A.657.050.

(b) By May 1st of the year in which the district is designated, a school district shall submit a required action plan approved by the superintendent of public instruction to the state board of education for approval.

(2) The state board of education shall, by May 15th of each year, either:

(a) Approve the school district's required action plan; or

(b) Notify the school district that the required action plan has not been approved stating the reasons for the disapproval.

(3) A school district notified by the state board of education that its required action plan has not been approved under subsection (2)(a) of this section shall either:

(a) Submit a new required action plan to the superintendent of public instruction and state board of education for review and approval within forty days of notification that its plan was rejected. The state board of education shall approve the school district's required action plan by no later than July 15th if it meets all of the requirements set forth in RCW 28A.657.050; or

(b) Submit a request to the required action plan review panel established under RCW 28A.657.070 for reconsideration of the state board's rejection within ten days of the notification that the plan was rejected. The review panel shall consider and issue a decision regarding a district's request for reconsideration to the state board of education by no later than June 10th. The state board of education shall consider the recommendations of the panel and issue a decision in writing to the school district and the panel by no later than June 20th. If the state board of education accepts the changes to the required action plan recommended by the panel, the school district shall submit a revised required action plan to the superintendent of public instruction and state board of education by July 30th. The state board of education shall approve the plan by no later than August 10th if it incorporates the recommended changes of the panel.

(4) If the review panel issues a decision that reaffirms the decision of the state board of education rejecting the school district's required action plan, then the school district shall submit a revised plan to the superintendent of public instruction and state board of education within twenty days of the panel's decision. The state board of education shall approve the district's required action plan by no later than July 15th if it meets all of the requirements set forth in RCW 28A.657.-050.

(5) For required action districts designated in 2014 only, the schedule for plan submittal and approval of required action plans will be as follows:

(a) A school district shall submit a required action plan for approval by the office of the superintendent of public instruction by June 13, 2015.

(b) A school district shall submit a required action plan approved by the office of the superintendent of public instruction to the state board of education for approval by June 20, 2014.

(c) The state board of education shall, by July 12, 2014 either approve the school district's required action plan or notify the district that the required action plan has not been approved stating the reasons for the disapproval. The district shall either:

(i) Submit a new plan to the office of the superintendent of public instruction and the state board of education by August 10, 2014.

(ii) Request a review of the plan by the required action plan review panel by July 22, 2014. The review panel shall consider and issue a decision regarding the district's request for reconsideration to the state board of education no later than August 8, 2014. If the state board of education accepts the changes to the required action plan recommended by the panel, the school district shall submit a revised required action plan to the superintendent of public instruction and the state board of education by August 15, 2014. The state board of education shall approve the plan no later than August 25, 2014, if it incorporates the recommended changes of the panel. If the review panel issues a decision that reaffirms the decision of the state board of education rejecting the school district's required action plan, then the school district shall submit a revised plan to the superintendent of public instruction and state board of education by August 15, 2014. The state board of education shall approve the district's required action plan by no later than August 25, 2014, if it meets all of the requirements set forth in RCW 28A.657.050.

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

WSR 14-11-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-117—Filed May 19, 2014, 1:53 p.m., effective May 20, 2014, 6:00 a.m.]

Effective Date of Rule: May 20, 2014, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets a treaty commercial gill-net season for salmon. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6. Sales of fish landed in the area downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area is lawfully open for sales under tribal regulations. Similarly, the sale of fish caught in Yakama Nation tributary fisheries are allowed when open under Yakama Nation regulations. Harvestable upriver spring chinook fish are available to the treaty tribes based on the current in-season run size estimate. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 5 and May 19, 2014. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

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

rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: May 19, 2014.

Philip Anderson
Director

NEW SECTION

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

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

(a) Season: 6:00 a.m. May 20 to 6:00 p.m. May 22, 2014.

(b) Gear: Gillnets.

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

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

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

(e) Season: Immediately until further notice.

(f) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(g) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon

between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

(h) All Dam sanctuaries for these gear types are in effect.

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

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

(b) Season: Immediately until further notice. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(4) Columbia River Tributaries upstream of Bonneville Dam

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

(b) Area: Drano Lake, Wind River and Klickitat River.

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

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. May 20, 2014:

WAC 220-32-05100Z Columbia River salmon seasons above Bonneville Dam. (14-98)

WSR 14-11-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-118—Filed May 20, 2014, 4:29 p.m., effective May 22, 2014, 12:01 a.m.]

Effective Date of Rule: May 22, 2014, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500U; and amending WAC 220-56-255.

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

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

Reasons for this Finding: The Marine Area 2 recreational halibut fishery has taken the Pacific halibut quota set aside for the northern nearshore area requiring closure of the fishery. The Marine Area 3 and 4 recreational fishery is projected to take the quota remaining in the north coast subarea by the end of the day May 24. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 20, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500V Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective 12:01 a.m. May 22, 2014, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open Thursdays through Sundays. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 1 (Nearshore fishery)**, Those waters from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long (then connecting to the 40 fathom depth contour in Oregon): Open Mondays through Wednesdays. It is permissible to retain bottomfish while having halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2:** Closed.

(4) **Catch Record Card Area 2 (Northern Nearshore fishery)** - Closed.

(5) **Catch Record Card Areas 3 and 4:** Open through May 24, 2014, Thursday and Saturday only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(a) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour. Except, on days open to the Pacific halibut fishery in these areas, lingcod, sablefish and Pacific cod can be retained seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
48°23.6'N. lat., 124°44.9'W. long.
48°18.6'N. lat., 124°43.6'W. long.
48°18.6'N. lat., 124°48.2'W. long.
48°10.0'N. lat., 124°48.8'W. long.
48°02.4'N. lat., 124°49.3'W. long.
47°37.6'N. lat., 124°34.3'W. long.
47°31.7'N. lat., 124°32.4'W. long.

(b) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, lingcod, and Pacific cod may be retained seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230, on days open to the Pacific halibut fishery in this area.

(6) **Catch Record Card Area 5:** Open May 22 through May 25, 2014, Thursday through Sunday. Open May 29 through May 31, 2014, Thursday through Saturday and open Saturday June 7, 2014. Halibut anglers are allowed to retain lingcod and Pacific cod caught while fishing for halibut in

waters deeper than 120 feet on days when halibut fishing is open.

(7) **Catch Record Card Areas 6 and 7:** Open May 22 through May 25, 2014, Thursday through Sunday. Open May 29 through May 31, 2014, Thursday through Saturday and open Saturday June 7, 2014. Halibut anglers may retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days that halibut fishing is open.

(8) **Catch Record Card Areas 8 through 10:** Open May 22 through May 25, 2014, Thursday through Sunday. Open May 29 through May 31, 2014, Thursday through Saturday and open Saturday June 7, 2014. Halibut anglers may retain lingcod caught while fishing for halibut in waters deeper than 120 feet on days that halibut fishing is open.

(9) **Catch Record Card Areas 11, 12, and 13:** Closed.

(10) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(11) It is unlawful to land halibut into a port closed to halibut.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. May 22, 2014:

WAC 220-56-25500U Halibut—Seasons—Daily and possession limits. (14-112)

WSR 14-11-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-119—Filed May 20, 2014, 4:49 p.m., effective May 20, 2014, 4:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

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

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

Reasons for this Finding: Restrictions in Areas 3 and 4 are implemented to keep impacts within preseason planning limits for Puget Sound chinook. A harvestable quota of salmon is available for the troll fleet. A closure in Areas 1 and 2 allows an accurate count to determine how close to the quota the fishery is. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 20, 2014.

Philip Anderson
Director

NEW SECTION

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

(1) Salmon Management and Catch Reporting Areas 1 and 2 open: Immediately through May 20, 2014, then closed.

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

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

(a) Landing and possession limit of 50 Chinook per boat per each entire open period for the entire Catch Areas 3 and 4.

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

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

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

(e) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360)

902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000B All-citizen commercial salmon troll.
(14-104)