

WSR 15-16-003
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 23, 2015, 10:02 a.m., effective July 23, 2015, 10:02 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends WAC 181-79A-257 clarifying requirements for out-of-state educator candidate assessments. These new, common core state standard assessments have been approved by the professional educator standards board (PESB), but emergency rule changes are required since the issuance of credentials to out-of-state teacher candidates is underway for the 2015-16 school year.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-257.

Statutory Authority for Adoption: RCW 28A.410.210.

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 transition to federal common core state standards entails adopting new teacher assessments. Those new assessments have been adopted by the PESB. However, out-of-state candidates are unable to receive credentials in time to [for] the next school year without emergency revisions to WAC 181-79A-257. The rules will be filed for public hearing in September.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.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: July 22, 2015.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-13-006, filed 6/5/14, effective 7/6/14)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Residency certificates. The residency certificate shall be issued by the superintendent of public instruction to any

candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who meets one of the following:

(a) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) of this subsection, a residency certificate shall be issued to a candidate who:

(i) Holds an appropriate degree from a regionally accredited college or university.

(ii) Holds or has held a certificate in the role, comparable to a residency certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years within the last seven years.

(c) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

(3) As per RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issuance of the appropriate certificate in accordance with this section.

(4) Out-of-state candidates must meet the assessment requirements per chapters 181-01 and 181-02 WAC. Equivalent assessments will be published by the board.

WSR 15-16-004
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 23, 2015, 11:31 a.m., effective July 24, 2015]

Effective Date of Rule: July 24, 2015.

Purpose: The DSHS division of child support (DCS) files this CR-103E, Rule-making order, to adopt an emergency rule amending WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children?, in order to implement SB 5793 (chapter 124, Laws of 2015), which takes effect on July 24, 2015. At the same time, DCS is filing a CR-101, Preproposal statement of inquiry, to commence the regular rule-making process to permanently amend WAC 388-14A-4200. DCS hopes that the regular rule-making process can be completed within the span of this emergency filing, but recognizes that the timelines under chapter 34.05 RCW may require the adoption of a second emergency rule to maintain the status quo if the final rule cannot be made effective within that time.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-4200.

Statutory Authority for Adoption: Implementation of SB 5793 (chapter 124, Laws of 2015), which takes effect on July 24, 2015, is authorized under RCW 26.23.030(3), 34.05.220 (1)(a), 34.05.322, 34.05.350 (1)(b), and 74.08.090.

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: SB 5793 (chapter 124, Laws of 2015), which takes effect on July 24, 2015, amended RCW 26.18.190 to add a new subsection (3) providing as follows:

"(3) When the veterans' administration apportions a veteran's benefits to pay child support on behalf of or on account of the child or children of the veteran, the amount paid for the child or children shall be treated for all purposes as if the veteran paid the benefits toward the satisfaction of that person's child support obligation for that period for which benefits are paid."

In order to implement SB 5793, DCS must amend WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children?" to include credit for these benefits paid by the United States Department of Veterans Affairs (the new name of the agency formerly known as the Veterans' Administration).

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

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

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

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

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

Date Adopted: July 22, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-065, filed 6/30/11, effective 7/31/11)

WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children? (1) When the department of labor and industries or a self-insurer pays compensation under chapter 51.32 RCW on behalf of or on account of the child or children of a noncustodial parent (NCP), the division of child support (DCS) treats the amount of compensation the department or self-insurer pays on behalf of the child or children as if the NCP paid the compensation toward the NCP's child support obligations.

(2) When the Social Security administration pays Social Security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of an NCP who is a disabled person, a retired person, or a deceased person, DCS treats the amount of benefits paid for the child or children as if the NCP paid the benefits toward the NCP's child support obligation for the period for which benefits are paid.

(3) When the veterans' administration (now known as the U.S. Department of Veterans Affairs) apportions a veteran's benefits to pay child support on behalf of or on account of the child or children of the veteran, DCS treats the amount of benefits paid for the child or children for all purposes as if the veteran paid the benefits toward the satisfaction of that person's child support obligation for the period for which benefits are paid.

(4) Under no circumstances does the NCP have a right to reimbursement of any compensation paid under subsection (1). ~~((2))~~ (2), or (3) of this section.

WSR 15-16-005
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed July 23, 2015, 1:15 p.m., effective July 24, 2015]

Effective Date of Rule: July 24, 2015.

Purpose: The agency is amending this WAC to include optometrists on the list of providers who can order occupational therapy for a Washington apple health client.

Citation of Existing Rules Affected by this Order: Amending WAC 182-545-200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SHB 1010, chapter 10, Laws of 2015, 64th Legislature 2015.

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

Reasons for this Finding: The state legislature passed SHB 1010, chapter 10, Laws of 2015, 64th Legislature 2015 regular session concerning the referral of medical cases to occupational therapists. The bill permits an occupational therapist to treat a medical case upon referral from an optometrist. The agency must amend WAC 182-545-200 to comply with the bill.

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

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

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

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

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

Date Adopted: July 23, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy).

(1) The following health professionals may enroll with the agency, as defined in WAC 182-500-0010, to provide outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy) within their scope of practice to eligible persons:

- (a) A physiatrist;
- (b) A licensed occupational therapist;
- (c) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (d) A licensed physical therapist;
- (e) A physical therapist assistant supervised by a licensed physical therapist;
- (f) A speech-language pathologist who has been granted a certificate of clinical competence by the American Speech, Hearing and Language Association; and
- (g) A speech-language pathologist who has completed the equivalent educational and work experience necessary for such a certificate.

(2) Persons covered by one of the Washington apple health programs listed in the table in WAC 182-501-0060 or receiving home health care services as described in chapter 182-551 WAC (subchapter II) are eligible to receive outpatient rehabilitation as described in this chapter.

(3) Persons who are enrolled in an agency-contracted managed care organization (MCO) must arrange for outpatient rehabilitation directly through his or her agency-contracted MCO.

(4) The agency pays for outpatient rehabilitation when the services are:

- (a) Covered;
- (b) Medically necessary;
- (c) Within the scope of the eligible person's medical care program;
- (d) Ordered by:
 - (i) A physician, physician's assistant (PA) or an advanced registered nurse practitioner (ARNP); or
 - (ii) An optometrist, if the ordered services are for occupational therapy only.

(e) Within currently accepted standards of evidence-based medical practice;

(f) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices;

(g) Begun within thirty calendar days of the date ordered;

(h) Provided by one of the health professionals listed in subsection (1) of this section;

(i) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

(j) Provided as part of an outpatient treatment program:

- (i) In an office or outpatient hospital setting;
- (ii) In the home, by a home health agency as described in chapter 182-551 WAC;

(ii) In a neurodevelopmental center, as described in WAC 182-545-900; or

(iv) For children with disabilities, age two or younger, in natural environments including the home and community setting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

(5) For eligible persons, twenty years of age and younger, the agency covers unlimited outpatient rehabilitation.

(6) For persons twenty-one years of age and older, the agency covers a limited outpatient rehabilitation benefit.

(7) Outpatient rehabilitation services for persons twenty-one years of age and older must:

(a) Restore, improve, or maintain the person's level of function that has been lost due to medically documented injury or illness; and

(b) Include an on-going management plan for the person and/or the person's caregiver to support timely discharge and continued progress.

(8) For eligible adults, twenty-one years of age and older, the agency limits coverage of outpatient rehabilitation as follows:

- (a) Occupational therapy, per person, per year:
 - (i) Without authorization:
 - (A) One occupational therapy evaluation;
 - (B) One occupational therapy reevaluation at time of discharge; and
 - (C) Twenty-four units of occupational therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment initiated under the original twenty-four units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Brain injury, which occurred within the past twenty-four months, with residual cognitive and/or functional deficits;

(III) Burns - Second or third degree only;

(IV) Cerebral vascular accident, which occurred within the past twenty-four months, with residual cognitive and/or functional deficits;

(V) Lymphedema;

(VI) Major joint surgery - Partial or total replacement only;

(VII) Muscular-skeletal disorders such as complex fractures which required surgical intervention or surgeries involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(VIII) Neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(IX) Reflex sympathetic dystrophy;

(X) Swallowing deficits due to injury or surgery to face, head, or neck;

(XI) Spinal cord injury which occurred within the past twenty-four months, resulting in paraplegia or quadriplegia; or

(XII) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(b) Physical therapy, per person, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy reevaluation at time of discharge; and

(C) Twenty-four units of physical therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of physical therapy may be available to continue treatment initiated under the original twenty-four units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Brain injury, which occurred within the past twenty-four months, with residual functional deficits;

(III) Burns - Second and/or third degree only;

(IV) Cerebral vascular accident, which occurred within the past twenty-four months, with residual functional deficits;

(V) Lymphedema;

(VI) Major joint surgery - Partial or total replacement only;

(VII) Muscular-skeletal disorders such as complex fractures which required surgical intervention or surgeries

involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(VIII) Neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(IX) Reflex sympathetic dystrophy;

(X) Spinal cord injury, which occurred within the past twenty-four months, resulting in paraplegia or quadriplegia; or

(XI) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the agency.

(c) Speech therapy, per person, per year:

(i) Without authorization:

(A) One speech language pathology evaluation;

(B) One speech language pathology reevaluation at the time of discharge; and

(C) Six units of speech therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to six additional units of speech therapy may be available to continue treatment initiated under the original six units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Brain injury, which occurred within the past twenty-four months, with residual cognitive and/or functional deficits;

(II) Burns of internal organs such as nasal oral mucosa or upper airway;

(III) Burns of the face, head, and neck - Second or third degree only;

(IV) Cerebral vascular accident, which occurred within the past twenty-four months, with residual functional deficits;

(V) Muscular-skeletal disorders such as complex fractures which require surgical intervention or surgery involving the vault, base of the skull, face, cervical column, larynx, or trachea;

(VI) Neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infection polyneuritis (Guillain-Barre));

(VII) Speech deficit due to injury or surgery to face, head, or neck;

(VIII) Speech deficit which requires a speech generating device;

(IX) Swallowing deficit due to injury or surgery to face, head, or neck; or

(X) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the agency.

(d) Durable medical equipment (DME) needs assessments, two per person, per year.

(e) Orthotics management and training of upper and/or lower extremities, two program units, per person, per day.

(f) Orthotic/prosthetic use, two program units, per person, per year.

(g) Muscle testing, one procedure, per person, per day. Muscle testing procedures cannot be billed in combination with each other. These procedures can be billed alone or with other physical and occupational therapy procedures.

(h) Wheelchair needs assessment, one per person, per year.

(9) For the purposes of this chapter:

(a) Each fifteen minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(10) For expedited prior authorization (EPA):

(a) A provider must establish that:

(i) The person's condition meets the clinically appropriate EPA criteria outlined in this section; and

(ii) The services are expected to result in a reasonable improvement in the person's condition and achieve the person's therapeutic individual goal within sixty calendar days of initial treatment;

(b) The appropriate EPA number must be used when the provider bills the agency;

(c) Upon request, a provider must provide documentation to the agency showing how the person's condition met the criteria for EPA; and

(d) A provider may request expedited prior authorization once per year, per person, per each therapy type.

(11) The agency evaluates a request for outpatient rehabilitation that is in excess of the limitations or restrictions, according to WAC 182-501-0169. Prior authorization may be requested for additional units when:

(a) The criteria for an expedited prior authorization does not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits;

(c) A new qualifying condition arises after the initial six visits are used.

(12) Duplicate services for outpatient rehabilitation are not allowed for the same person when both providers are performing the same or similar procedure(s).

(13) The agency does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(14) The agency does not reimburse a health care professional for outpatient rehabilitation performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

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 regulation clarifies that coho salmon must be released through July 31, 2015. On June 30, 2015, the intent of the compact was [to] allow only Chinook and sockeye salmon retention, along with hatchery steelhead in the daily bag limit. Coho salmon typically don't enter the river until early to mid-August, but reports of coho presence in the Columbia River which has prompted the clarification for Washington rules. The daily bag limit allows any Chinook to be retained (fin clipped or not) as part of the daily limit, but only one can be an adult Chinook. The area from the Oregon/Washington border upstream to Priest Rapids Dam remains open and the daily bag limit remains consistent with permanent regulations outlined in the 2015-2016 fishing pamphlet. Harvestable summer Chinook and sockeye are available for harvest based on inseason forecasts and management agreements. 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. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal 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

WSR 15-16-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-220—Filed July 23, 2015, 3:34 p.m., effective July 23, 2015, 3:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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: July 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-2000T Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective immediately through July 31, 2015, it is permissible to fish in waters of the Columbia River from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(1) Daily salmonid limit is 6 fish; minimum size is 12 inches. Up to 2 may be adult salmon or hatchery steelhead or 1 of each. Only 1 may be an adult Chinook. Release all coho.

(2) Any Chinook (adipose fin clipped or not) may be kept. Sockeye are included in the daily adult salmonid limit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-2000Q Freshwater exceptions to statewide rules—Columbia River. (15-196)

**WSR 15-16-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-222—Filed July 23, 2015, 4:08 p.m., effective July 27, 2015]

Effective Date of Rule: July 27, 2015.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100P; and amending WAC 232-28-621.

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

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

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

Reasons for this Finding: Preliminary estimates indicate that landed catch of Chinook will exceed the preseason expectations in Marine Area 9. The Chinook fishery is closing to control impacts on stocks of concern and ensure compliance with conservation objectives and agreed-to management 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: July 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100P Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective July 27 through August 15, 2015, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

Catch Record Card Area 9:

(1) Daily limit of 2 salmon plus 2 additional pink. Release Chinook and chum.

(2) South of a line from Foulweather Bluff to Olele Point: Open. Daily limit 2 salmon plus 2 additional pink. Release Chinook and chum.

(3) Edmonds Public Fishing Pier: Daily limit of 2 salmon plus 2 additional pink. No more than 1 may be a Chinook. Release chum August 1 through August 15.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 16, 2015:

WAC 232-28-62100P Puget Sound salmon—Saltwater seasons and daily limits.

WSR 15-16-012
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 24, 2015, 7:01 a.m., effective July 24, 2015, 7:01 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making is being performed to implement requirements of ESSB 5550 which exempts from workers' compensation insurance the taxi, for hire, and limousine drivers who own vehicles or lease them from others; and exempts commercial transportation service (CTS) drivers as defined in Title 48 RCW. The legislation allows for elective coverage for these exempt employments.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-35203 Special reporting instructions, 296-17A-1401 Classification 1401 (Taxi companies), 296-17A-1404 Classification 1404 (Cabulance and paratransit) and 296-17A-6301 Classification 6301 (Limousine drivers); and new WAC 296-17-35205 Special reporting for taxi, for hire, limousine drivers and entities; and commercial transportation service drivers.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

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

Reasons for this Finding: ESSB 5550 repeals mandatory coverage requirements for workers' compensation insurance for drivers who own vehicles, or lease a vehicle from others, in the taxi, for hire, limousine, and cabulance industry; and exempts from workers' compensation requirements all drivers of CTSs (also known as transportation network companies). Effective July 24, 2015, coverage is optional. This rule making immediately implements the reporting and classification changes required as a result of ESSB 5550. Permanent rule making is being performed in conjunction with this emergency. The amendments to the rules: Remove language about mandatory coverage and penalties of noncompliance; instruct the industry how they must report and pay premium for mandatory workers' compensation coverage for July 1 through 23, 2015; and instruct the industry how they may opt for coverage beginning July 24, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 0.

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

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

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

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

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

Date Adopted: July 24, 2015.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 12-24-067, filed 12/4/12, effective 1/4/13)

WAC 296-17-35203 Special reporting instruction. (1) Professional and semiprofessional athletic teams. Athletes assigned and under contract to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance. Athletes assigned to a Washington-domiciled sports team but under contract with a parent team domiciled outside of the state are mandatorily covered by Washington industrial insurance unless the player is eligible for coverage in another state, and there is a valid coverage agreement as described below.

A player is eligible for coverage in another state only when both the player and the employer agree in writing that the employment is principally localized in that state.

Example: If the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they cannot agree to be under California coverage since California doesn't qualify as a state in which the player competes in regularly scheduled games.

(a) Upon request, the department will provide forms to the owners of professional and semiprofessional sports teams for entering into agreements for both the sport player and the sport team. These agreements are referred to as "coverage agreements." Unless coverage is refused in the alternative state, the coverage agreement will determine the worker's home state for workers' compensation coverage.

(b) When a sport team and a player agree to workers' compensation coverage in another state, the following rules apply:

Sport player coverage agreement:

(i) A sport player coverage agreement must be signed by the team (employer) and each individual player (worker) covered out-of-state. Workers' compensation premiums for any work performed by the player before the agreement was signed must be paid to the department. To be valid, an agreement must be:

- Signed by both parties, dated, and show the name of the state where coverage is provided.
- Agree that the player's employment is principally located in that state.
- Kept as part of the employer's records for at least three years after the player is released from the team.

(ii) The employer must provide the department a copy of a sport player coverage agreement when requested. Employers who do not provide the department copies of a sport player coverage agreement when requested are considered not to have secured payment of compensation as required and all premiums and penalties allowed for in Title 51 RCW will apply.

(iii) If the employers' out-of-state workers' compensation insurer rejects an injury claim because the player is a Washington worker, the employer is considered not to have secured payment of compensation as required and all premium and penalties allowed for in Title 51 RCW apply.

Sport team coverage agreement:

(c) A sport team coverage agreement must be signed by the employer (team) and the qualifying out-of-state workers' compensation insurer. Workers' compensation premiums for work performed before the agreement was signed must be paid to the department. To be valid, an agreement must:

- Be signed by both parties, dated, and show the name of the state where coverage is provided.
- Specify that the team's players are principally localized in that state.
- Specify the insurer agreeing to provide coverage for a team based in Washington.

(d) The sport team coverage agreement must be signed annually. Copies of the agreement along with a current copy of the team's out-of-state insurance policy must be submitted to the department of labor and industries every year the out-of-state coverage is provided.

Premium payments are required for any work performed by Washington players prior to the date the department receives copies of any year's current sports teams' coverage agreement and proof of out-of-state coverage.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried, part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried, part time, percentage of profits or piece basis, the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.-030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

- (i) The name of each worker;
- (ii) The Social Security number of each worker;
- (iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;
- (iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of

actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(A) The employers' unified business identification account number (UBI).

(B) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(C) The total contract award.

(D) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(E) Physical location/site where the work will be performed including legal description.

(F) Number of acres covered by the contract.

(G) Dates during which the work will be performed.

(H) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall, in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and submit payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account

for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - Verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employer's work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' accounts online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - Work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(i) The name of the contractor who has been engaged to perform the work;

(ii) The contractor's UBI number;

(iii) The contractor's farm labor contractor number;

(iv) The total contract award;

(v) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(vi) Location where the work is to be performed;

(vii) A contact name and phone number of the person, firm, or corporation who let the contract;

(viii) The total estimated wages to be paid by the contractor and any subcontractors;

(ix) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(x) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8
P.O. Box 44168
Olympia, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) Logging and/or tree thinning—Mechanized operations—Industry rule. The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - Mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) Special drywall industry rule.

(a) What is the unit of exposure for drywall reporting? Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) I do some of the work myself. Can I deduct material I as an owner install or finish? Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owner hours} \div (\text{owner hours} + \text{worker hours}) = \% \text{ of owner discount.}$$

$$\% \text{ of owner discount} \times (\text{total footage of job} - \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

(c) Can I deduct material installed or finished by subcontractors? You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them? To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) Can I be disqualified from using the discounted rates? Yes. You can be disqualified from using the discounted rates for three years if you:

- (i) Do not file all reports, including supplemental reports, when due;
- (ii) Do not pay premiums on time;
- (iii) Underreport the amount of premium due; or
- (iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) If I discover I have made an error in reporting or paying premium, what should I do? If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department that find errors in their reporting and paying premiums, and that voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

(7) Safe patient handling rule. The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services

would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

- Hotels, or similar places furnishing only food and lodging, or simply domiciliary care;
- Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more;
- Nursing homes, as defined and which come within the scope of chapter 18.51 RCW;
- Birthing centers, which come within the scope of chapter 18.46 RCW;
- Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW;
- Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

(8) Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).

(a) **General definitions.** For purposes of this section, the following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers' compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

Note: Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the

course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

(b) Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state? A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, that employer will not need to pay premiums in Washington for work in the other state during the calendar year, as long as that employer fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at: <http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTerritorial/Default.asp>

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

Note: Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

(c) What if a Washington employer knows the Washington workers' work in another state will exceed the temporary and incidental period? If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, the employer must immediately provide the department with proof of out-of-state coverage in order to avoid Washington premium liability for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

(d) **What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but that does not occur?** If a Washington employer did not pay workers' compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or nonconsecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and interest. The fourth quarter report is due by January 31 of the following year.

(e) **What records must the employer keep while employing Washington workers in another state?** In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

(f) **What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental?** A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report of out-of-state work to the department for each state in which that employer has Washington workers performing work. The supplemental report must include the following information:

- (i) The Washington employer's unified business identification number (UBI).
- (ii) The Washington employer's department account identification number.
- (iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.
- (iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.
- (v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.
- (vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.
- (vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.
- (viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state. Copies of pertinent records must be made available to auditors in the event of an audit.

(g) **Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state?** Washington workers may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

(h) **If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington?** Yes, but only if the Washington employer:

- (i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;
- (ii) Provides proof of out-of-state coverage;
- (iii) Filed the appropriate quarterly reports with the department when due; and
- (iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

(9) ~~((Special for hire taxi/industry rules. All for hire vehicles must be covered for workers' compensation insurance. The owner of the vehicle is responsible for the workers' compensation insurance premiums. Those businesses that provide only cabulance or limousine services must report actual hours worked.~~

~~(a) **What is the unit of exposure for taxis?** Flat rate by driver—The rate is based on four hundred eighty hours per driver each quarter.~~

~~Flat rate by vehicle—The rate is based on nine hundred sixty hours per vehicle each quarter.~~

~~Actual hours—The rate is based on actual hours worked.~~

~~(b) **Can I use a flat rate for reporting some vehicles and actual hours for reporting other vehicles?** No, you must choose to report using only one of the three methods: Flat rate per driver, flat rate per vehicle, or actual hours worked. Owners who choose to report by driver or by actual hours worked must maintain verifiable records, such as lease agreements or payroll records. Where verifiable records are not available or not maintained, the owner must pay premiums on the flat rate of nine hundred sixty hours per vehicle each quarter.~~

~~(c) **What happens if premiums are not paid?** If the for hire/taxi vehicle owner does not pay premiums, the department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for hire vehicle certificate until the premiums are paid.~~

~~(10)) **Horse racing industry rules.** These rules apply to persons licensed by the Washington horse racing commission (WHRC) and governed by WAC 260-36-250.~~

(a) **Who is responsible for paying industrial insurance premiums?**

(i) The trainer will be responsible to pay the industrial insurance premiums owed. Premiums will be paid to the WHRC monthly, at the end of the coverage month or before the trainer leaves the track taking his/her horses when leaving before the end of the coverage month. WHRC will submit premiums to the department of labor and industries on a quarterly basis. The employee must be properly licensed by the WHRC for the duties being performed. This includes all

exercise riders and pony riders who need steward approval of their license application, whether at the track or at the farm.

(ii) Licensed trainers shall be assessed:

(A) One unit of premiums in classification 6625 for each licensed groom or assistant trainer employed at any one time;

(B) One unit of premiums in classification 6626 for licensed exercise riders and pony riders charged per stall for each day the trainer has a horse housed in a stall at a licensed track during a licensed meet; and

(C) One unit of premiums in classification 6627 for licensed exercise riders and pony riders for each calendar day a licensed exercise rider or pony rider works under contract for the trainer at a location other than at a licensed track during a licensed meet.

(b) What does the trainer do when an employee leaves the job? Trainers must notify the WHRC within forty-eight hours when any employee leaves their employ. If a trainer fails to notify the WHRC timely, the trainer will be responsible for the full premium payment until notification is made.

(c) When are track employees covered under horse racing classifications?

(i) Track employees are only covered on the grounds of a Washington race track during its licensed race meet and periods of training. The licensed race meet and periods of training apply to that period of time when the WHRC has authority on the grounds, including the period before the live race meet begins, when horses are exercised in preparation for competition, and through the end of the licensed race meet.

(ii) Covered track employees who are licensed exercise riders or pony riders may work off the grounds of a Washington race track, but only after obtaining a farm employee license. The trainer must notify the WHRC when the employee will be working off the grounds, so that the additional per-day farm employee premium can be calculated and assessed to the trainer for each day the track employee works off the grounds.

(iii) Employees working on the grounds of a Washington race track prior to or after this period must be covered as farm employees (classification 6627) to be able to make a claim against the horse racing industry account, or the trainer can cover such employees under another account (classification 7302).

(d) Who can be covered under the farm employee classification (6627)?

(i) Licensed exercise riders and pony riders working at the farm must be assigned to a trainer and not the farm. Such employees cannot be assigned to the owner of the farm or training center unless the owner is licensed as a trainer.

(ii) Covered farm employees who are licensed exercise riders or pony riders may come to the Washington race track to assist the trainer during the live race meet and periods of training. As long as a farm employee is covered at the farm, and the trainer notifies the WHRC when the employee will be working at the track, the farm employee may work at the track without additional premium being owed.

(e) Are employees covered while working in another state?

(i) Trainers with employees from Washington may continue coverage when they are at another recognized race track

in another state if the other jurisdiction has a reciprocal agreement with the state of Washington. The trainer must pay the premiums for grooms and assistant trainers in classification 6625, and for exercise riders and pony riders at the farm in the farm classification, 6627. For a list of states with reciprocal agreements with the state of Washington, see WAC 296-17-31009.

(ii) Trainers will need to continue to report Washington employees to the WHRC prior to the start of each month so an assessment can be made.

(iii) Failure to report, or to report correctly, may result in the trainer being referred to the stewards or the executive secretary of the WHRC for action.

(iv) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

(f) Must horse owners pay industrial insurance premiums in Washington? Licensed owners shall be assessed one hundred fifty dollars per year for one hundred percent ownership of one or more horses. Partial owners shall be assessed prorated amounts of the one hundred fifty dollar fee. In no event shall a licensed owner be required to pay more than one hundred fifty dollars. This fee helps fund workers' compensation coverage for injured workers. It does not extend any coverage to owners.

NEW SECTION

WAC 296-17-35205 Special reporting for taxi, for hire, limousine drivers or entities; and commercial transportation service drivers. (1) When does the law providing for nonmandatory coverage begin? The law takes effect July 24, 2015, and exempts the following individuals, who may elect coverage as authorized under RCW 51.32-.030:

(a) Drivers providing commercial transportation services (CTS), also sometimes known as transportation network company services (TNCs), as defined in Title 48 RCW;

(b) For-hire vehicle operators as defined under chapter 46.72 RCW who own the for-hire vehicle or lease it from others;

(c) Limousine drivers as defined under chapter 46.72A RCW who own the limousine or lease it from others; and

(d) Taxicab operators, as defined under chapter 81.72 RCW, who own the taxicab or lease it from others.

(2) What are the special rules for these drivers and entities? If you are exempt from mandatory coverage as described in subsection (1) of this section:

(a) You may elect to buy workers' compensation insurance to cover yourself as provided by RCW 51.32.030 and as defined in WAC 296-17-31007 Owner coverage.

(b) For the reporting period July 1, 2015, through July 23, 2015, if we do not receive an application for optional coverage from you by July 23, 2015, you must report your mandatory coverage on a prorated basis using one of these methods:

(i) For flat rate by driver, one hundred twenty hours per driver;

(ii) For flat rate by vehicle, two hundred forty hours per vehicle;

(iii) Actual hours worked.

(3) **What are the quarterly reporting options for taxi drivers and entities, for-hire drivers and entities, and CTS drivers?** When reporting for an entire quarter:

(a) If you are an exempt driver who has elected coverage, you may report your exposure under either subclassification 1401-01 (480 hours per quarter per driver) or 1401-03 (actual hours worked), but you must report all your exposure for the quarter under only one subclassification.

(b) If you are or an entity reporting mandatorily covered workers, you may choose to report all driver exposure under subclassifications 1401-01 (480 hours per quarter per driver), 1401-02 (960 hours per quarter per vehicle), or 1401-03 (actual hours worked), but you must report all driver exposure for a quarter under only one subclassification.

(c) Reporting method options:

(i) Flat rate by driver - The rate is based on four hundred eighty hours per driver each quarter (classification 1401-01);

(ii) Flat rate by vehicle - The rate is based on nine hundred sixty hours per vehicle each quarter (classification 1401-02);

(iii) Actual hours - The rate is based on actual hours worked (classification 1401-03).

Special note: If you report by driver or by actual hours worked, you must maintain verifiable records, such as lease agreements or payroll records.

(4) **What are the quarterly reporting options for limousine drivers and entities, and cabulance drivers and entities?** For exempt drivers who elect coverage and for entities paying for coverage for mandatorily covered workers, when reporting an entire quarter, hours must be reported in one of the following methods:

(a) Actual hours worked; or

(b) Four hundred eighty hours per quarter.

Special note: If you report actual hours worked, you must keep detailed records.

AMENDATORY SECTION (Amending WSR 11-24-022, filed 11/30/11, effective 1/1/12)

WAC 296-17A-1401 Classification 1401.

~~((1401-01 Taxicab companies—Flat rate by driver~~

~~Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, pickup and delivery of small packages, and incidental "cabulance" services which may be offered in conjunction with the taxi service. This classification is for reporting drivers on a flat rate of four hundred eighty hours per driver each quarter.~~

~~This classification excludes: Owners who choose to report using a flat rate per vehicle who report in classification 1401-02; owners who choose to report actual hours who report in classification 1401-03; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cab-~~

~~ulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers with no other job duties who may be reported separately in classification 4904.~~

~~**Special note:** Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.~~

~~**Special note:** Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.~~

~~1401-02 Taxicab companies—Flat rate by vehicle~~

~~Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, pickup and delivery of small packages, and incidental "cabulance" services which may be offered in conjunction with the taxi service. This classification is for reporting vehicles on a flat rate of nine hundred sixty hours per vehicle each quarter.~~

~~This classification excludes: Owners who choose to report using a flat rate per driver who report in classification 1401-01; owners who choose to report actual hours worked who report in classification 1401-03; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cabulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers with no other job duties who may be reported separately in classification 4904.~~

~~**Special note:** Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.~~

~~**Special note:** Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.~~

~~1401-03 Taxicab companies—Actual hours~~

~~Applies to establishments engaged in furnishing passenger transportation to others. Work contemplated by this classification includes, but is not limited to, operation of the vehi-~~

ele, loading/unloading passengers' luggage, assisting passengers in and out of the vehicle, pickup and delivery of small packages, and incidental "cabulance" services which may be offered in conjunction with the taxi service. This classification is for reporting taxis on an actual hours basis.

This classification excludes: Owners who choose to report using a flat rate per driver who report in classification 1401-01; owners who choose to report a flat rate per vehicle who report in classification 1401-02; maintenance/repair of the vehicle which is to be reported in 3411; establishments that operate ambulance services which are to be reported separately in classification 1405; establishments that operate cabulance and paratransit services exclusively which are to be reported separately in classification 1404; and dispatchers with no other job duties who may be reported separately in classification 4904.

Special note: Establishments that furnish only a dispatch service for taxicab drivers who own or lease their own vehicles may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met. Employees of a taxicab dispatch service who perform maintenance/repair are to be reported separately in classification 3411. See RCW 51.08.180 for the definition of "worker" to aid in determining if drivers are employees. Please also refer to the special note in classification 1404-12.

Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.

1401-04 Pedicab and horse drawn carriage companies

Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

Work contemplated by this classification includes, but is not limited to, operation of the vehicle, loading/unloading passengers' luggage, and assisting passengers in and out of the vehicle. This classification also includes the care and feeding of animals while vehicle is available for transporting passengers.

Businesses using this classification report the actual hours of operation per for-hire vehicle and must maintain records that are verifiable.)) Applies to providing passenger transportation to others, including:

- Establishments that employ taxi or for-hire drivers as defined under:

- Either chapter 81.72 or 46.72 RCW; and

- WAC 296-17-35205, which describes special reporting.

- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who:

- Own their own vehicles or who lease vehicles from others; and

- Elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

- Commercial transportation services (also known as transportation network company) drivers as defined in Title 48 who are exempt from coverage, but who have elected

optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

- Pedicab and horse drawn carriage companies.

Special note: If all conditions are met for the general reporting rules about standard exception employees, establishments that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be reported separately in classification 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are reported separately in classification 3411.

Work contemplated by this classification includes, but is not limited to:

- Operation of the vehicle;

- Loading/unloading passengers' luggage;

- Assisting passengers in and out of the vehicle;

- Pickup and delivery of small packages; and

- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

This classification excludes:

- Maintenance/repair of the vehicle which is reported in classification 3411;

- Establishments that operate ambulance services which is reported separately in classification 1405;

- Establishments that operate cabulance and paratransit services exclusively which is reported separately in classification 1404; and

- Dispatchers with no other job duties who may be reported separately in classification 4904.

For administrative purposes, classification 1401 is divided into the following subclassification(s):

1401-01 Passenger transportation companies - Flat rate by driver

This classification is for reporting drivers on a flat rate of four hundred eighty hours per driver each quarter.

1401-02 Passenger transportation companies - Flat rate by vehicle

This classification is for reporting vehicles on a flat rate of nine hundred sixty hours per vehicle each quarter.

1401-03 Passenger transportation companies - Actual hours

This classification is for reporting employees on an actual hours worked basis.

1401-04 Pedicab and horse-drawn carriage companies

Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

Work contemplated by this classification includes, but is not limited to, care and feeding of animals while the vehicle is available for transporting passengers.

AMENDATORY SECTION (Amending WSR 11-24-022, filed 11/30/11, effective 1/1/12)

WAC 296-17A-1404 Classification 1404.

1404-06 Vessels, ferries, tugs, and steamboats, N.O.C.

Applies to employees not covered under federal jurisdiction, or another classification (N.O.C.), who provide services

for seaworthy vessels such as ferries, tugs, or steamboats at the docking site or on adjacent land. Vessels may operate seasonal or year-round. Employments include, but are not limited to, dock workers, maintenance workers, traffic control personnel, and night security personnel.

Special note: Care should be exercised prior to assignment of this classification as the workers could be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act. A detailed description of these acts can be found in classifications 0104 or 0202.

1404-07 Train rides

Applies to establishments engaged in the operation of passenger excursion train rides for scenic or amusement purposes on an intrastate basis only. Excursion train rides are typically operated from a mountain, lake or similar site. The trains may operate on a seasonal basis in direct relation to the volume of tourists, weather conditions, or dates of local celebration. Employments in this classification include, but are not limited to, drivers/engineers, guides, lecturers, hostesses, and maintenance personnel. Ticket sellers may be reported separately in classification 4904 provided that they do not handle baggage and that the conditions of the standard exception general reporting rules have been met. On-board food service personnel may be reported separately in classification 3905 as long as their duties are limited to food service and they do not facilitate the train ride or train ride operation in any way.

1404-11 Escort and pilot cars

Applies to establishments that provide escort or pilot car services for others. The duties include driving ahead of, or behind, various types of vehicles.

This classification excludes employees of an employer assigned to drive escort or pilot cars in connection with the delivery of equipment, buildings, goods, or similar items which the employer sells or contracts to deliver. Such employment is ~~((to be))~~ reported separately in the classification applicable to sales or delivery of such items. For example, an escort driver employed by a common carrier transporting a modular home to a customer's site is ~~((to be))~~ reported separately in classification 1102.

1404-12 Cabulance and paratransit

Applies exclusively to establishments that provide on-demand, nonemergency transportation services to passengers with special needs. Vehicles used are usually vans that are equipped for accessibility to accommodate passengers with mobility limitations including passengers in wheelchairs or gurneys. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, assisting passengers in and out of the vehicle, and maintenance/repair of the vehicle when performed by employees of an employer subject to this classification.

This classification excludes:

- Cabulance services offered in conjunction with a taxi service ~~((which are to be reported separately in))~~; see classification 1401((-));

- Cabulance services offered in conjunction with an ambulance service which are ~~((to be))~~ reported separately in classification 1405((-);

- Paratransit services offered in conjunction with a municipal bus or transit system which are ~~((to be))~~ included in classification 0803 or 1501 as appropriate((-);

- Ambulance services which are ~~((to be))~~ reported separately in classification 1405((-);

- Limousine drivers ~~((who are to be reported separately in))~~; see classification 6301((-); and

- Dispatchers with no other duties who are ~~((to be))~~ reported separately in classification 4904.

Special note: Care should be exercised in determining what type of cabulance service is being provided. This classification *is not to be* assigned when provided as an incidental part of a taxi cab service subject to classification 1401. A cabulance service as defined in this rule will need a specialized van or bus to transport passengers as opposed to a passenger automobile that is not equipped to accommodate special mobility needs. The transportation service must be prearranged.

~~((Special note: Vehicle owners are responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing. The department of licensing will suspend or revoke the for-hire vehicle certificate until the premiums are paid.))~~

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-6301 Classification 6301.

Lot and marina sales personnel for vehicles and pleasure craft; driving instructors, and limousine drivers

Classification 6301 is a standard exception classification, as described in WAC 296-17-31018 Exception classifications, with restrictions on both the type of work and where the work can take place. If any of a worker's duties are excluded from 6301 because of restrictions described in this rule, then none of the worker's hours may be reported in classification 6301.

Special note: Care must be taken to:

- Look beyond job titles such as "salesperson" or "driving instructor." Job titles do not ensure the work or the workplace meet the requirements for 6301;

- Ensure standard exceptions are permitted - Some basic classifications include sales;

- Ensure workers assigned to classification 6301 perform no work other than what is allowed by this classification and that permitted in WAC 296-17-4904.

Classification 6301 is restricted to the following work areas:

- Those allowed for office work in WAC 296-17A-4904;
- Classrooms;
- Sales lots and other sales display areas;
- In a vehicle/water craft for a test drive or instruction;
- Operating a "special occasion" limousine.

Classification 6301 includes all activities allowed by WAC 296-17A-4904 (office workers) as well as:

- Test driving;
- Showing and demonstrating products;
- Sales training;
- In car driving instruction for driving schools;

- Driving for limousine services that take people to and from special events by appointment.

Classification **6301** excludes:

- Classroom instructors or administrators at driving schools performing no work inside vehicles, who are reported separately in classification **6103**;
- Vehicle repair or maintenance work reported separately in classification **3411**;
- In vehicle driving instructors for high schools, who are reported in classification **6104**;
- Airport limousine services or similar shuttle type operations that are reported separately in classification **1407**;
- On call taxi-type services (~~that are reported separately in~~). See classification **1401**;
- Dealership employees responsible for transporting vehicles (such as cars purchased at an auction) who are reported separately in classification **3411**.

For administrative purposes, classification **6301** is divided into the following subclassifications:

6301-00 Sales personnel: Vehicles and marine pleasure craft

6301-06 Instructors of driving schools

6301-07 Limousine drivers

~~((**Special note:** The owner of a limousine is responsible for payment of workers' compensation premiums. The department will report nonpayment to the department of licensing and the for-hire vehicle certification will be revoked until payment is made. See also WAC 296-17-35203(9), Special reporting instruction.))~~

WSR 15-16-019

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-221—Filed July 24, 2015, 1:42 p.m., effective July 26, 2015]

Effective Date of Rule: July 26, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-310-200.

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: Elevated water temperature in the Columbia River has resulted in higher than expected mortalities of sockeye salmon returning to the Okanogan River. Fish destined to return to the Okanogan River are staging in the Columbia River above the Rocky Reach Dam. This fishing closure for sockeye salmon is needed to protect these fish from harvest and allow them to migrate to their spawning grounds when water temperatures improve. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 24, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000U Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective one hour after official sunset on July 26, 2015, until further notice, is it unlawful to retain sockeye salmon in waters of the Columbia River from Rocky Reach Dam upstream to Chief Joseph Dam.

WSR 15-16-035

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-223—Filed July 27, 2015, 5:00 p.m., effective July 28, 2015, 6:00 a.m.]

Effective Date of Rule: July 28, 2015, 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 220-32-05100F; 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 3.5 day treaty commercial gill net season for salmon. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries and the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The inseason forecast for summer Chinook is 127,000 fish and over 42,000 harvestable fish are available to the treaty tribes. Sockeye also remain available for harvest based on the upgraded run size of 511,000 sockeye. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on May 5, June 10, and July 27, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

Date Adopted: July 27, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100G 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 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

- (1) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - (a) Season: 6:00 a.m. July 28 until 6:00 p.m. July 31, 2015
 - (b) Gear: Gillnets. No minimum mesh size.
 - (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. Live release of all oversize and under-size sturgeon is required.
 - (d) All sanctuaries for this gear type are in effect, except Spring Creek.
- (2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - (a) Season: Immediately until further notice.
 - (b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
 - (c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.
 - (d) All sanctuaries for these gear types are in effect.
- (3) 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. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

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

(b) Season: Immediately through July 31, 2015. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100F Columbia River salmon seasons above Bonneville Dam. (15-217)

WSR 15-16-037 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-225—Filed July 28, 2015, 9:02 a.m., effective July 30, 2015]

Effective Date of Rule: July 30, 2015.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: The 2015 return of sockeye will be sufficient to provide for the Lake Wenatchee spawning escapement goal. This means that additional fish will be present to provide for additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 28, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500D Freshwater exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 220-310-195, effective July 30, 2015, one hour before official sunrise, until further notice, it is permissible to fish for sockeye salmon in Lake Wenatchee:

(1) Daily limit 4 sockeye, minimum size 12 inches in length.

(2) Selective gear rules and night closure in effect for all species.

(3) Anglers may fish with 2 poles so long as they possess a valid two-pole endorsement.

(4) Bull trout, steelhead, and Chinook salmon must be released unharmed without removing the fish from the water.

(5) All other species - closed.

WSR 15-16-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-226—Filed July 28, 2015, 9:02 a.m., effective July 30, 2015]

Effective Date of Rule: July 30, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-310-19500A; 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: Closing the rivers by emergency rule is necessary as the water temperatures in the rivers are exceeding the upper limit of tolerance for sockeye and summer Chinook survival. The angling and handling of adipose present salmon at these temperatures further reduces survival after release. 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: July 28, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19500E Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective July 30, 2015, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Icicle River** - Closed to salmon fishing in those waters from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(2) **Okanogan River** - Closed to salmon fishing in those waters from the Hwy 97 bridge immediately upstream of the mouth to Zosel Dam.

(3) **Similkameen River** - Closed in those waters from the mouth upstream to Enloe Dam.

(4) **Wenatchee River** - Closed to salmon fishing in those waters from the mouth to the Icicle River Road Bridge.

REPEALER

The following section of the Washington Administrative Code is repealed July 30, 2015:

WAC 220-310-19500A Freshwater exceptions to statewide rules—Eastside. (15-203)

WSR 15-16-039

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed July 28, 2015, 9:12 a.m., effective August 6, 2015]

Effective Date of Rule: August 6, 2015.

Purpose: Federal regulation 42 C.F.R. §431.232(d) does not allow medicaid benefits to continue at their previous level following an evidentiary hearing decision to reduce or terminate those benefits. Therefore, this emergency rule is to ensure the administration has language in rule that conforms to the C.F.R. regarding continuing benefits.

Citation of Existing Rules Affected by this Order:
 Amending WAC 388-825-145.

Statutory Authority for Adoption: RCW 71A.12.030, 34.05.350 (1)(b), 74.08.080, 42 C.F.R. §431.232, 42 C.F.R. §431.230.

Other Authority: RCW 71A.12.030, 34.05.350 (1)(b), 74.08.080, 42 C.F.R. §431.232, 42 C.F.R. §431.230.

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: 42 C.F.R. §431.232(d) requires the state to discontinue medicaid benefits following an initial administrative order that affirms the state's decision to reduce or terminate those benefits. WAC 388-825-0135(2) currently allows continued benefits (including medicaid benefits) past the initial order. This emergency rule is necessary to conform DSHS rules with federal requirements.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 24, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-04-072, filed 2/4/08, effective 3/6/08)

WAC 388-825-145 Will my benefits continue if I request an administrative hearing? (1) If you request an administrative hearing regarding the department's decision to transfer you from a residential habilitation center to the community under RCW 71A.20.080, the rules in WAC 388-825-155 apply.

(2) If you request an administrative hearing (~~within the ten-day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:~~

~~(a) Terminate your eligibility for services;~~

~~(b) Reduce or terminate your services;~~

~~(c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC; or~~

~~(d) Disenroll you from a DDD home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver)) regarding the department's decision to reduce or terminate your services, and you request the hearing before the date specified on the notice of the action, and none of the conditions in WAC 388-825-150 applies, the department will not reduce or terminate those services unless and until an administrative law judge issues an initial order or a review judge issues a final order that reduces or terminates those services. This subsection also applies to the department's decision to disenroll you from a DDA home and community based services waiver under WAC 388-845-0060.~~

(3) The department will take no action until there is a final decision on your appeal of the department's decision to remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

(4) The department will take no action until there is a final decision on your appeal to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

(5) After the administrative hearing, you may have to pay back up to sixty days of the continued benefits you get (~~as described in chapter 388-410 WAC;~~) if the administrative hearing decision (~~is in favor of the department~~) determines your benefits should be less than the continued benefits you have received.

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.

WSR 15-16-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-228—Filed July 28, 2015, 4:03 p.m., effective July 31, 2015]

Effective Date of Rule: July 31, 2015.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-621.

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

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

Reasons for this Finding: Chinook broodstock collection efforts at the Tulalip and Wallace River Hatchery is well behind the goal. The closure of the Chinook retention within the Tulalip Bubble is necessary in order to fulfill broodstock collection requirements for both hatcheries. The Chinook retention may reopen if broodstock collection efforts indicate the goal will be met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 28, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100Q Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective July 31, 2015, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

Catch Record Card Area 8-2: Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point:

(1) Open only from Friday through 11:59 a.m. the following Monday of each week.

(2) Daily limit 2 salmon plus 2 additional pink salmon. Release Chinook.

WSR 15-16-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-231—Filed July 29, 2015, 3:53 p.m., effective July 29, 2015, 3:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000K; and amending WAC 232-28-620.

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

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

Reasons for this Finding: This emergency rule change is necessary to remain within Chinook catch guidelines for Marine Area 4. There is insufficient time to promulgate 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; and 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: July 29, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62000L Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 3:** Open through September 30: Daily limit of 2 salmon of which not more than one

may be a Chinook salmon, plus two additional pink salmon; release wild coho.

(2) **Catch Record Card Area 4:**

(a) Effective immediately until further notice, the waters south of a line from Kydaka Point to Shipwreck Point are closed.

(b) Open through August 1: Daily limit of 2 salmon of which not more than one may be a Chinook salmon, plus two additional pink salmon; release wild coho.

(c) Open from August 2 through September 30: Daily limit of 2 salmon release Chinook salmon, plus two additional pink salmon; release wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000K Coastal salmon—Saltwater seasons and daily limits. (15-219)

WSR 15-16-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-229—Filed July 29, 2015, 3:54 p.m., effective August 3, 2015]

Effective Date of Rule: August 3, 2015.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100J; and amending WAC 220-52-071.

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: Harvestable surpluses of sea cucumbers exist in the districts specified to allow for commercial harvest. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; and 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: July 29, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07100K Sea cucumbers Notwithstanding the provisions of WAC 220-52-071, effective August 3, 2015, it is unlawful to take or possess sea cucumbers taken for commercial purposes except from the Sea Cucumber Districts, Marine Fish/Shellfish Catch Reporting Areas and area descriptions as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber District 1 Monday through Friday of each week: 20A and B, 21A and B, 22A and B.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber District 2 Monday through Friday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber Districts 1 and 2 Monday through Wednesday of each week: 23B and 25 A, B, C, D, and E.

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

(5) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 2,500 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 2,500 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 3, 2015:

WAC 220-52-07100J Sea cucumbers. (15-131)

**WSR 15-16-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-232—Filed July 30, 2015, 1:04 p.m., effective August 1, 2015]

Effective Date of Rule: August 1, 2015.

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 220-32-05100G; 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: Extends the season in the area below Bonneville Dam to allow tribal sales into the fall season which begins August 1. It is anticipated the sales will continue to be allowed throughout the fall season. Continues to allow the sale of fish caught in Yakama Nation tributary fisheries and the area downstream of Bonneville Dam (SMCRA 1E1) when open under tribal regulations. The pre-season forecast for fall Chinook is 925,000 fish. Harvestable fish are available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River, July 29, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 30, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100H 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 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

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

(2) 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. Live release of all oversize and under-size sturgeon is required.

(3) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam (within SMCRA 1E1). Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) 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) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(4) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-32-05100G Columbia River salmon seasons above Bonneville Dam. (15-223)

WSR 15-16-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-227—Filed July 31, 2015, 4:12 p.m., effective August 1, 2015]

Effective Date of Rule: August 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000R; 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: Low water and higher than normal water temperatures are causing a delay in migration and increased stress on wild salmon returning to the Quillayute system, making them more vulnerable to fishing pressure. The Quileute Tribe has also closed its fishery for two weeks, and will reassess the situation at the time. These closures are needed to protect wild Chinook and coho salmon. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: July 30, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-18000U Freshwater exceptions to statewide rules—Coastal Notwithstanding the provisions of WAC 220-310-180, effective August 1, 2015, until further notice the following waters are closed to all fishing:

- (1) Bogachiel River (Clallam Co.) and all tributaries outside Olympic National Park
- (2) Calawah River (Clallam Co.) and all tributaries outside Olympic National Park
- (3) Dickey River (Clallam Co.) and all tributaries outside Olympic National Park
- (4) Sol Duc River (Clallam Co.) and all tributaries outside Olympic National Park

(5) Quillayute River (Clallam Co.) from the confluence of the Sol Duc and Bogachiel Rivers downstream 475 yards to fluorescent orange paint on rocks.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-310-18000R Freshwater exceptions to statewide rules—Coastal. (15-180)

WSR 15-16-072
EMERGENCY RULES
HEALTH CARE AUTHORITY
 (Washington Apple Health)

[Filed July 31, 2015, 8:14 a.m., effective July 31, 2015, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To align the lead behavior analysis therapist (LBAT) requirements in WAC 182-531A-0800 with those set by the behavior analyst certification board (BACB), and to add board certified assistant behavioral analysts to the list of providers eligible to be an LBAT.

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The BACB has changed eligibility standards to sit for board certified behavior analyst certification. The agency's current rule is in conflict with these standards and is more lenient, which compromises public safety by letting an unqualified person provide ABA services. These emergency rules are necessary to continue the current emergency rule adopted under WSR 15-08-101. The agency initiated the permanent rule-making process under WSR 15-08-102 (CR-101) filed April 1, 2015, and distributed an early draft of the permanent rule to interested parties for review and comment in June 2015. The agency is reviewing the comments received and plans to file the rules for public hearing soon.

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

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

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

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

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

Date Adopted: July 13, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements. (1) ~~((Stage one.))~~ The center of excellence's (COE's) evaluating and prescribing providers must function as a multidisciplinary team whether facility-based or practitioner-based.

(a) The qualifications for a COE are:

(i) The entity or individual employs:

(A) A person or persons licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and has a specialty in one of the following:

(I) Neurology;

(II) Pediatric neurology;

(III) Developmental pediatrics;

(IV) Psychology;

(V) Pediatric psychiatry; or

(VI) Psychiatry; or

(B) A licensed midlevel practitioner (i.e., advanced registered nurse practitioner (ARNP) or physician assistant (PA)) who has been trained by and works under the tutelage of one of the specialists in (a)(i)(A) of this subsection and meets the qualifications in (a)(ii) of this subsection; or

(C) Another qualified medical provider who meets qualifications in (a)(ii) of this subsection and who has been designated as a center of excellence by the agency.

(ii) The entity or individual has been prequalified by the agency as meeting or employing persons meeting the following criteria:

(A) Physicians and psychologists must have demonstrated expertise to diagnose an autism spectrum disorder using a validated diagnostic tool or confirm the diagnosis by observing the client's behavior, interviewing family members, or reviewing the documentation available from the client's primary care provider, the child's individualized education plan (IEP), or individualized family service plan (IFSP); or

(B) Have sufficient experience in or knowledge of the medically necessary use of applied behavior analysis (ABA);

(C) Are sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and to develop a multidisciplinary clinical treatment plan as described in WAC 182-531-1418(2); and

(iii) The entity or individual is enrolled with the agency or the client's MCO, unless the client has third-party insurance.

(b) Examples of providers who can qualify and be paid for these services as a designated COE are:

(i) Multidisciplinary clinics;

(ii) Individual qualified provider offices; and

(iii) Neurodevelopmental centers.

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

(a) Lead behavior analysis therapist (LBAT).

(i) Requirements.

(A) The LBAT must be:

(I) Licensed by the department of health (DOH) to practice independently as a physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW, in good standing with no license restrictions; or

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as a physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW in good standing with no license restrictions; or

(III) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.

(B) The LBAT must:

(I) Enroll as a servicing provider and be authorized to supervise ancillary providers; and

(II) Be a board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board; or

(III) ~~((Have two hundred twenty-five hours of course work related to behavior analysis and either: Seven hundred fifty hours of supervision under a BCBA, or two years of practical experience designing and implementing comprehensive ABA therapy treatment plans. (a)(i)(B)(III) of this subsection is retroactive to January 1, 2013.))~~ Be eligible to sit for board certification under standards set by the behavior analyst certification board (BACB); or

(IV) Be a board certified assistant behavior analyst (BCaBA) by the BACB and practice according to the scope and responsibilities as defined by the BACB.

(ii) Role. If the LBAT's role is filled by a BCaBA, the responsibilities as described below must be fulfilled by both the BCaBA and the supervising BCBA, as required by the BACB. The LBAT must:

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

(B) Supervise a minimum of five percent of the total direct care provided by the therapy assistant per week (e.g., one hour per twenty hours of care).

(b) Therapy assistant. Requirements.

(i) Therapy assistants must be:

(A) Able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

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

(C) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;

(ii) The therapy assistant must:

(A) Have sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a child with core symptoms of autism; and

(B) Have a written letter of attestation signed by the lead LBAT that the therapy assistant has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services prior to providing services without supervision to covered clients; and

(C) Enroll as a performing/servicing provider.

(iii) Role. The therapy assistant must:

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

(B) Be supervised by an LBAT who meets the requirements in (a)(i) of this subsection; and

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

(c) Licensure for facility-based day program setting. This applies to the model described in WAC 182-531-1420 (2)(a). Outpatient hospital facilities providing these services must meet the applicable DOH licensure requirements. A clinic or nonhospital-based facility providing these services must be licensed as a community mental health agency by DBHR, as described in chapter 388-877A WAC. A provider rendering direct ABA services must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable. Other providers serving as members of the multidisciplinary care team must be licensed or certified under Title 18 RCW, as required.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-273-0020 and 388-273-0030.

Statutory Authority for Adoption: RCW 74.08.090, 80.36.470.

Other Authority: State of Washington 2015-2017 biennial operating budget (ESSB 6052 207).

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: RCW 80.36.470 prohibits enrollment in WTAP if program expenditures exceed the total amount of funds made available by the legislature. The department is repealing the above rules because the WTAP program is not funded in the state of Washington 2015-2017 biennium legislative budget (ESSB 6052 207).

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 2.

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

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

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

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

Date Adopted: July 28, 2015.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-273-0020 Who may receive Washington telephone assistance program (WTAP)?

WAC 388-273-0030 How you can apply for WTAP.

WSR 15-16-074

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 31, 2015, 10:07 a.m., effective July 31, 2015, 10:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The community services division is repealing WAC 388-273-0020 Who may receive Washington telephone assistance program (WTAP)? and 388-273-0030 How you can apply for WTAP.

WSR 15-16-079

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-234—Filed July 31, 2015, 1:26 p.m., effective August 1, 2015]

Effective Date of Rule: August 1, 2015.

Purpose: Amend commercial fishing rules for Puget Sound commercial shrimp.

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

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

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

Reasons for this Finding: The 2015 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the Catch Area 20A trawl fishery; and (2) reopens Catch Area 23A-E (east) to spot shrimp fishing as sufficient quota remains. 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: July 31, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

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

- (1) Shrimp pot gear:
 - (a) All waters of Shrimp Management Areas 1A, 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, except:
 - (i) All waters of the Discovery Bay Shrimp District are closed.
 - (ii) All waters of Shrimp Management Areas 2W and 6 are closed to the harvest of spot shrimp.
 - (iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all species other than spot shrimp.
 - (b) The spot shrimp catch accounting biweekly management period is through August 11.
 - (c) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds per biweekly management period.

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

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

(2) Shrimp beam trawl gear:

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

(b) Those portions of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open.

(c) All waters of Catch Area 20A are open.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. July 31, 2015:

WAC 220-52-05100E Puget Sound shrimp pot and beam trawl fishery—Season. (15-205)

WSR 15-16-080

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-224—Filed July 31, 2015, 2:43 p.m., effective August 1, 2015]

Effective Date of Rule: August 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-180.

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

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

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

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

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

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

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

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

Date Adopted: July 31, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000T Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective August 1, 2015, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Hoh River and South Fork Hoh River** - Open for trout and other game fish. Selective gear rules apply.

(2) **Naselle River** - Open for salmon from Highway 101 Bridge to the Highway 4 Bridge.

(a) Daily limit of six fish, up to 4 may be adults, release wild Chinook.

(3) **North Nemah River** - Open for salmon from Highway 101 Bridge upstream to the bridge on Nemah Valley Road.

(a) Daily limit of six fish, up to 4 may be adults, release wild Chinook.

(4) **Willapa River** - Open for salmon from the mouth (City of South Bend boat launch) to the Highway 6 Bridge approximately 2 miles below the mouth of Trap Creek.

(a) Daily limit of six fish, up to 4 may be adults, release wild Chinook.

(b) Anglers may fish with two poles from the City of South Bend boat launch upstream to the second bridge on Camp one Road.

(5) **Willapa River, South Fork** - Open for salmon from the mouth to the bridge on Pehl Road.

(a) Daily limit of six fish, up to 3 may be adults and only one may be a wild adult coho. Release wild Chinook.

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 15-16-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-235—Filed July 31, 2015, 2:46 p.m., effective July 31, 2015, 2:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To correct the date in the title and applicable season years of WAC 232-28-273.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-273.

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

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

Reasons for this Finding: The permanent rule filing that included WAC 232-28-273 indicated the applicable season dates to be 2012-2014. The WAC was adopted by the commission as 2015-2017 and this is reflected in the 2015 Big Game Hunting Seasons and Regulations pamphlet that has been distributed to the public. This filing [filing] will correct that error through the 2015 hunting season as there is insufficient time to engage in permanent rule making before the hunting season begins. The department will engage in permanent rule making to rectify this issue for the 2016-2017 seasons.

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 [1], Amended 1 [0], Repealed 0.

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

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

Date Adopted: July 31, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-27300A 2015-2017 Moose seasons, permit quotas, and areas. Notwithstanding the provisions of WAC 232-28-273, effective immediately until further notice, the title of this WAC section shall read as follows:

WAC 232-28-273 2015-2017 Moose season, permit quotas, and areas.

WSR 15-16-082
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-230—Filed July 31, 2015, 3:10 p.m., effective August 1, 2015, 9:00 a.m.]

Effective Date of Rule: August 1, 2015, 9:00 a.m.

Purpose: Amend commercial fishing for Puget Sound salmon.

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

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

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A targeting the United States share of Fraser River sockeye salmon. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: July 31, 2015.

Joe Stohr
J. W. Unsworth
Director

NEW SECTION

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

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

Table with 2 columns: Hours, Dates. Row 1: 9:00 AM - 9:00 PM, August 2, 2015

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

(b) Purse seine are required to brail and fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

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

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

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

Table with 2 columns: Hours, Dates. Row 1: 11:00 AM - 11:00 PM, August 2, 2015

(a) It is unlawful to retain rockfish.

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

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

Table with 2 columns: Hours, Dates. Row 1: 9:00 AM - 9:00 PM, August 1, 2015

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

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

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

(4) "Quick Reporting Fisheries" All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" pursuant to WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 3, 2015:

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

WSR 15-16-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-233—Filed July 31, 2015, 3:12 p.m., effective August 9, 2015, 9:00 p.m.]

Effective Date of Rule: August 9, 2015, 9:00 p.m.

Purpose: This emergency rule will 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 implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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

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

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

Reasons for this Finding: Sets the initial fishing periods for the 2015 fall season for non-Indian commercial fisheries in the mainstem Columbia River and select area sites. The preseason forecast for the Columbia River return of fall Chinook is 925,000 fish. This forecast provides harvestable Chinook for commercial purposes. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of July 29, 2015. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of

the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 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: July 31, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000V Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, it is unlawful for a person to take or possess salmon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in this section.

(1) Mainstem Columbia River**(a) SEASON:**

9 PM Sunday August 9 to 6 AM Monday August 10, 2015

9 PM Tuesday August 11 to 6 AM Wednesday August 12, 2015

9 PM Thursday August 13 to 6 AM Friday August 14, 2015

9 PM Sunday August 16 to 6 AM Monday August 17, 2015

9 PM Tuesday August 18 to 6 AM Wednesday August 19, 2015

9 PM Thursday August 20 to 6 AM Friday August 21, 2015

9 PM Sunday August 23 to 6 AM Monday August 24, 2015

9 PM Tuesday August 25 to 6 AM Wednesday August 26, 2015

9 PM Thursday August 27 to 6 AM Friday August 28, 2015

(b) AREA: SMCRA 1D, 1E. The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

(c) GEAR: Drift gillnets only. 9-inch minimum mesh size.

(d) SANCTUARIES: Washougal and Sandy Rivers.

(e) ALLOWABLE POSSESSION: Chinook, Coho, Pink and Sockeye salmon and shad.

(2) Deep River Select Area.

(a) SEASON: Open hours are 7 PM to 7 AM through Sept. 12 and 6 PM to 9 AM thereafter.

Monday and Thursday nights during August 17-28, 2015

Monday, Tuesday, Wednesday, and Thursday nights August 31 - September 4, 2015

Monday, Tuesday, Wednesday, Thursday and Friday nights September 7-26, 2015

Monday, Tuesday, Wednesday, and Thursday nights Sept. 28 - October 16, 2015

6 PM Monday October 19 to 9 AM Tuesday October 20, 2015

(b) AREA: The Deep River Select Area. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

(c) GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size through September 12 and 6-inch maximum mesh thereafter. Net length: 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not 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 gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision supersedes the permanent rule and all other rules that conflict with it.

(3) Tongue Point/South Channel Select Area.

(a) SEASON: Open hours are 7 PM to 7 AM through Sept 11, 2015, and 4 PM to 10 AM thereafter. Open days are Monday, Tuesday, Wednesday, and Thursday nights from August 24 through September 18, 2015 and Sunday, Monday, Tuesday, Wednesday, and Thursday nights from September 20 through October 30, 2015.

(b) AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent-jurisdiction waters.

(c) GEAR: Gillnet; 6-inch maximum mesh. Net length: 250 fathoms maximum.

i. Tongue Point fishing area: weight not to exceed two pounds in any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel.

ii. South Channel area: no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed

(4) Blind Slough/Knappa Slough Select Area.

(a) SEASON: Open hours are: 7 PM - 7 AM through Sept. 11 and 6 PM - 10 AM thereafter. Open days are: Monday, Tuesday, Wednesday, and Thursday nights from August 24 through September 18 and Sunday, Monday, Tuesday, Wednesday, and Thursday nights from September 20 through October 30

(b) AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

(c) GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

(5) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

(b) ALLOWABLE POSSESSION: Chinook, Coho, Pink and Sockeye salmon and shad.

(c) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(6) Quick Reporting: This quick-reporting requirement applies to all seasons in this section. 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC 220-69-240. Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

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 220-33-01000U Columbia River season below Bonneville. (15-218)

WSR 15-16-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-238—Filed August 3, 2015, 3:43 p.m., effective August 3, 2015, 3:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500I; and amending WAC 220-52-045.

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: Test results from the Washington department of health show that crab tested in the area between the WA/OR border and the Queets River are not safe for human consumption. Levels of domoic acid, detected through routine testing have exceeded the federally established action level. 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: August 3, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-52-04500J Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-52-045, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from the Queets River (47°31.70), Washington to the U.S./Canada Border: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line

connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) Notwithstanding the provisions of WAC 220-52-045, effective immediately, it is unlawful to:

(a) Fish for Dungeness crab in the coastal waters of the Pacific Ocean between the Washington/Oregon border (46°15.00) and the Queets River (47°31.70), Washington;

(b) Fish for Dungeness crab in Grays Harbors, Willapa Bay and the Columbia River;

(c) Effective 12:01 a.m. August 10, 2015, set, maintain, operate, or possess in those waters listed in subsections (3)(a) and (b) of this section, any baited or unbaited shellfish pots or ring nets for any reason; and

(d) Possess, transport or deliver Dungeness crab within the waters closed in this section unless the following conditions are met:

(i) Vessels that participate in the coastal Dungeness crab fishery from north of the Queets River (47°32.05) or south of the WA/OR border may possess crab for delivery into Washington ports south of the Queets River (47°31.70), provided the crab were taken north of the Queets River (47°32.05) or south of the WA/OR border.

(ii) Prior to entering Washington coastal waters of the Pacific Ocean between the WA/OR border (46°15.00) and the Queets River (47°31.70), including Grays Harbor, Willapa Bay and the Columbia River, the vessel operator must call 360-581-3337 and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

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 220-52-04500I Commercial crab fishery—Seasons and areas—Coastal. (15-182)

WSR 15-16-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-239—Filed August 3, 2015, 3:44 p.m., effective August 3, 2015, 3:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000R; and amending WAC 220-56-330.

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

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

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

Reasons for this Finding: Test results from the Washington department of health show that crab tested in the area between the WA/OR border and the Queets River are not safe for human consumption. Levels of domoic acid, detected through routine testing have exceeded the federally established action level. 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: August 3, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-33000S Crab—Areas and seasons Notwithstanding the provisions of WAC 220-56-330:

(1) Effective immediately until further notice, it is unlawful to fish for Dungeness crab in Marine Area 1 adjacent to Washington and Marine Area 2, including Marine Area 2-1 Willapa Bay and Marine Area 2-2 Grays Harbor and the Columbia River.

(2) Effective 12:01 a.m. August 10, 2015, it is unlawful to set, maintain, operate, or possess in those waters listed in subsections (1) of this section, any baited or unbaited shellfish pots or ring nets for any reason.

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 220-56-33000R Crab—Areas and seasons. (15-165)

WSR 15-16-104 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-236—Filed August 4, 2015, 11:15 a.m., effective August 5, 2015]

Effective Date of Rule: August 5, 2015.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Afternoon water temperatures in the Methow River are approaching the upper limit for survival of trout. The Methow River receives significant fishing pressure during the summer. Trout hooked and handled are subject to stress, injury, or death as a result of low instream flow conditions and elevated water temperatures. 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: August 4, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500F Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective August 5, 2015, until further notice the following waters are closed to fishing daily from 2:00 p.m. to midnight:

Methow River (Okanogan County) From County Road 1535 Bridge (lower Burma Rd.) upstream to Weeman Bridge (8 miles upstream of Winthrop).

WSR 15-16-116
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-240—Filed August 4, 2015, 4:29 p.m., effective August 5, 2015, 5:00 a.m.]

Effective Date of Rule: August 5, 2015, 5:00 a.m.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

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

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

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A targeting the United States share of Fraser River sockeye salmon. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: August 4, 2015.

J. W. Unsworth
 Director

NEW SECTION

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

Areas 7 and 7A:

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

Hours	Dates
5:00 AM - 9:00 PM	August 5, 2015 and August 7, 2015

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

(b) Purse seine are required to brail and fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

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

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

Areas 7 and 7A:

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

Hours	Dates
8:00 AM - 11:59 PM	August 5, 2015 and August 7, 2015

(a) It is unlawful to retain rockfish.

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

Areas 7 and 7A:

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

Hours	Dates
5:00 AM - 9:00 PM	August 6, 2015 and August 7, 2015

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

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

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

(4) **"Quick Reporting Fisheries"** All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are

designated as "Quick Reporting Required" pursuant to WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 8, 2015:

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

**WSR 15-16-117
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-241—Filed August 4, 2015, 4:30 p.m., effective August 5, 2015, 7:00 a.m.]

Effective Date of Rule: August 5, 2015, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-42800M; and amending WAC 220-47-428.

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: Harvestable surplus of pink salmon is available in Puget Sound Salmon Management and Catch Reporting Area 6D for a commercial beach seine opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 4, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-47-42800M Beach seine—Open periods. Notwithstanding the provisions of WAC 220-47-428, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
6D	7 AM - 7 PM daily 8/5 through 8/7, 8/10 through 8/14, and 8/17 through 8/21/2015

- (1) It is unlawful to retain Chinook, chum, and sockeye.
- (2) Observers are required to participate in the fishery and fishers must contact the department prior to fishing.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. August 21, 2015:

WAC 220-47-42800M Beach seine—Open periods.