

**WSR 12-12-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-96—Filed May 23, 2012, 3:55 p.m., effective May 23, 2012, 3:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-56-25500M; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There is sufficient halibut quota remaining in Marine Areas 3 and 4 to reopen the recreational halibut fishery for two more days. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 23, 2012.

Joe Stohr  
 for Philip Anderson  
 Director

NEW SECTION

**WAC 220-56-25500N Halibut—Seasons—Daily and possession limits.** Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board. Fishery will reopen on August 3 through September 30, 2012, Fridays through Sundays only.

(2) **Catch Record Card Area 2** - Closed.

(i) **Catch Record Card Area 2 (Northern Nearshore fishery)** - Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30-fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47°31.70 N. lat, 124°37.03 W. long

47°25.67 N. lat, 124°34.79 W. long

47°12.82 N. lat, 124°29.12 W. long

47°58.00 N. lat, 124°24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open Thursday May 31 and Saturday June 2, 2012. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(4) **Catch Record Card Area 5** - Open May 24 through May 28, 2012, Thursday through Monday only. Open May 31 through June 23, 2012, Thursdays, Fridays and Saturdays.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open May 24 through May 28, 2012, Thursday through Monday only. Open May 31 through June 2, 2012, Thursday, Friday and Saturday.

(6) **Catch Record Card Areas 11, 12, and 13** - Closed.

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port closed to recreational halibut fishing, except halibut lawfully caught in Canada.

(9) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500M	Halibut—Seasons—Daily and possession limits. (12-87)
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**WSR 12-12-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-95—Filed May 23, 2012, 3:57 p.m., effective May 23, 2012, 3:57 p.m.]

Effective Date of Rule: Immediately.

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

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

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: Based on the current run size forecast of 216,500 upriver spring chinook, there are hatchery spring chinook available for harvest in this area[.] Continues rules previously adopted, which adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open and prohibits the full removal of nonlegal fish from the water. Regulation is consistent with guidance from the Washington fish and wildlife commission and the department's director, and compact/joint state action of May 22, 2012. 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 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 bio-

logical 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 1, Amended 0, Repealed 1.

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: May 23, 2012.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

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

##### **1. Columbia River:**

i. Effective May 26, 2012 through May 27, 2012: Open for fishing for salmonids from a true north-south line through Buoy 10 upstream to Beacon Rock (defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse 1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.). Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead or sockeye), of which no more than 2 may be adults and no more than one may be an adult Chinook. All sockeye count as part of the adult bag limit. Release all wild Chinook and wild steelhead. Salmon minimum size is 12 inches.

ii. Effective May 26, 2012 through May 27, 2012: Open to fishing for salmonids from the bank only, and closed to fishing from boats for salmonids from Beacon Rock (see boundary description in section (1)(i) upstream to 600 feet below the fish ladder at the new Bonneville Dam powerhouse. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead or sockeye), of which no more than 2 may be adults and no more than one may be an adult Chinook. All

sockeye count as part of the adult bag limit. Release all wild Chinook and wild steelhead. Salmon minimum size is 12 inches.

iii. Effective until further notice: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to the Oregon/Washington border, it is unlawful when fishing from vessels that are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

**2. Deep River (Wahkiakum Co.):** Effective immediately through June 15: The hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed to adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

**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 232-28-61900S      Exceptions to statewide rules—Columbia River. (12-88)

**WSR 12-12-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-93—Filed May 23, 2012, 4:04 p.m., effective May 25, 2012]

Effective Date of Rule: May 25, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable hatchery adult summer steelhead are returning to the South Fork Toutle and Green rivers. Opening the lower portions of the South Fork Toutle and Green rivers early allows additional recreational opportunity to harvest hatchery summer steelhead returning to Columbia River tributaries in strong numbers. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 23, 2012.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900U Exceptions to statewide rules—South Fork Toutle and Green rivers.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 25 through June 1, 2012, a person may fish for steelhead in waters of the South Fork Toutle River from the mouth to the 4700 Road Bridge. Daily limit of two hatchery steelhead; release wild steelhead and all other game fish. Selective gear rules are in effect.

(2) Effective May 25 through June 1, 2012, a person may fish for steelhead in waters of the Green River from the mouth to 400 feet below the water intake at the upper end of the hatchery. Daily limit of two hatchery steelhead; release wild steelhead and all other game fish. Selective gear rules are in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective June 2, 2012:

WAC 232-28-61900U      Exceptions to statewide rules.

**WSR 12-12-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-86—Filed May 23, 2012, 4:14 p.m., effective May 30, 2012, 12:01 a.m.]

Effective Date of Rule: May 30, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule change is necessary to assure a successful kids fishing event. The fish will be planted in the lake two days prior to the event to better acclimate them. On the day of the event, only children fourteen years of age and under will be allowed to fish in the lake. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 23, 2012.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900R Exceptions to statewide rules—Heart Lake (Skagit Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 30 through June 2, 2012, it is unlawful to fish in those waters of Heart Lake, except open to fishing 6:00 a.m. to 12:00 p.m. June 2, 2012, to anglers participating in the youth fishing event. Juvenile anglers can continue to fish on June 2, 2012, after the youth fishing event closes.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 3, 2012:

WAC 232-28-61900R	Exceptions to statewide rules—Heart Lake (Skagit Co.)
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#### **WSR 12-12-005**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 12-97—Filed May 23, 2012, 4:55 p.m., effective June 1, 2012]

Effective Date of Rule: June 1, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: An inadvertent release of triploid rainbow trout from net pen facilities on Rufus Woods has resulted in a large number of triploid rainbow downstream of Chief Joseph Dam. These fish are undesirable in the anadromous zone due to potential predation and competition with listed species and are available for harvest under NOAA Permit 1554. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 23, 2012.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900X Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective June 1 through August 15, 2012, a person may fish in waters of the Columbia River from the Highway 173 Bridge at Brewster to Chief Joseph Dam, daily limit of 10 trout, minimum size 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 16, 2012:

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

**WSR 12-12-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-94—Filed May 24, 2012, 10:36 a.m., effective June 1, 2012]

Effective Date of Rule: June 1, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: To avoid gear conflicts with bank anglers. This section of the Skykomish River around Reiter Ponds is opening earlier than in previous years. This rule will expand the no fishing from any floating device rule to match the longer season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 24, 2012.

Joe Stohr  
 for Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900V Exceptions to statewide rules—Skykomish River (Reiter Ponds outlet)** Notwithstanding the provisions of WAC 232-28-619, effective June 1

through July 31, 2012, it is unlawful to fish from any floating device in waters 1,000 feet downstream to 1,500 feet upstream of Reiter Ponds outlet.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2012:

WAC 232-28-61900V Exceptions to statewide rules—Skykomish River (Reiter Ponds outlet)

**WSR 12-12-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-98—Filed May 24, 2012, 3:25 p.m., effective May 26, 2012]

Effective Date of Rule: May 26, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: (1) Carson National Fish Hatchery is expected to meet its escapement goal of 1,500 fish. Surplus hatchery origin fish are available for harvest. (2) As of May 22, a total of 2,171 adult spring chinook had entered Little White Salmon National Fish Hatchery. The hatchery escapement goal is 1,000 fish. Surplus hatchery fish, including jacks, are available for harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 24, 2012.

Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900Y Exceptions to statewide rules—Drano Lake and Wind River.** Notwithstanding the provisions of WAC 232-28-619:

(1) Drano Lake - Effective May 26 through June 30, 2012, a person may fish in waters downstream of markers on the point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Hwy. 14 Bridge. Daily limit six fish; up to four may be adults, of which no more than two may be hatchery steelhead. Release all salmon other than hatchery Chinook. Release wild Chinook and wild steelhead. Release all trout other than steelhead. Minimum size 12 inches for salmon and 20 inches for steelhead. Night closure, bank fishing only area near the outlet, and Wednesday closures will remain in effect.

(2) Wind River - Effective May 26 through June 30, 2012, a person may fish in waters from the Burlington Northern Railroad Bridge to 400 feet below Shipherd Falls; from 100 feet above Shipherd Falls to 400 feet below the coffer dam; and from 100 feet above the coffer dam to 800 yards downstream of Carson National Fish Hatchery. Daily limit six fish; up to four may be adults, of which no more than two may be hatchery steelhead. Release wild steelhead and all other game fish. Release all salmon other than Chinook. Release wild Chinook downstream from Shipherd Falls. Minimum size 12 inches for salmon and 20 inches for steelhead. Night closure will remain in effect. In addition, the anti-snagging rule remains in effect. Only fish hooked inside the mouth may be retained.

REPEALER

The following section of the Administrative Code is repealed effective July 1, 2012:

WAC 232-28-61900Y Exceptions to statewide rules—Drano Lake and Wind River.

**WSR 12-12-019  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-99—Filed May 24, 2012, 3:27 p.m., effective May 29, 2012]

Effective Date of Rule: May 29, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Through May 18, just six hatchery adult spring chinook have returned to Kalama Falls Hatchery, well below the hatchery broodstock goal of three hundred ninety fish. The preseason forecast anticipated a return of seven hundred adult spring chinook to the river system. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 24, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900Z Exceptions to statewide rules—Kalama River.** Notwithstanding the provisions of WAC 232-28-619, effective May 29 through July 31, 2012, it is unlawful to fish for or possess Chinook salmon in waters of the Kalama River from the boundary markers at the mouth to the upper salmon hatchery.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2012:

WAC 232-28-61900Z Exceptions to statewide rules—Kalama and Lewis River.

**WSR 12-12-023  
EMERGENCY RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed May 25, 2012, 10:06 a.m., effective May 25, 2012, 10:06 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend sections of chapter 170-290 WAC, Working connections and seasonal child care (SCC) subsidy programs, to comply with section 11 of ESSB 5921, enrolled as chapter 42, Laws of 2011 1st sp. sess., that took effect on July 1, 2011. Rules for the SCC programs are revised to:

- Require individuals who apply for or receive SCC subsidies to seek department of social and health services

(DSHS) child support enforcement services, unless the individual has good cause not to cooperate, as a condition of receiving department of early learning (DEL) child care subsidy benefits; and

- Provide a six-month eligibility period before a family receiving SCC benefits must recertify his or her income eligibility, although families must continue to report changes provided in the rules. The six-month provision will apply so long as enrollment in SCC is capped.

This forth emergency rule continues the same provisions as the third emergency rule on the same subject in WSR 12-04-096 for the SCC program, while DEL takes further steps toward permanent adoption.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-3565, 170-290-3610, and 170-290-3660.

Statutory Authority for Adoption: RCW 43.215.060; chapter 43.215 RCW; section 501, chapter 265, Laws of 2006 (uncodified).

Other Authority: ESSB 5921 (chapter 42, Laws of 2011 1st sp. sess.); 2ESHB 1087 (chapter 50, Laws of 2011 1st sp. sess.); EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.).

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

Reasons for this Finding: The legislature enacted ESSB 5921 to maintain compliance with and accountability for the federal temporary assistance for needy families (TANF) block grant requirements under the Personal Responsibility and Work Opportunity Act of 1996, and to further reduce costs for the state's WorkFirst program. (WorkFirst is the state's "welfare-to-work" program encompassing several state agencies and programs, including certain DEL child care programs.)

ESSB 5921 was adopted as a WorkFirst "redesign" measure to restructure the program for better efficiency, to reduce fraud and to lower overall costs. According to the legislature's 2011-2013 Operating budget overview - 2ESHB 1087: "*During fiscal year 2012 (July 1, 2011 through June 30, 2012) the WorkFirst programs are to be restructured and become performance based...The budget also increases the number and visibility of fraud detection in public assistance programs through more staff and increased technology.*"

The overview document further describes savings estimated at \$62.9 million through TANF, WorkFirst and child care subsidy changes contained in ESSB 5921 and 2ESHB 1087:

**"TANF REDUCTIONS - \$62.9 MILLION SAVINGS"**

*"The proposed budget makes several changes to the cash benefits program including: (1) implementing an income eligibility test for a care giver who is providing for a child outside of the child's home; and (2) applying the sixty-month time limit to any family where the parent is in the home. Major child care reductions include: (1) reduced child care for those whose WorkFirst participation is suspended; (2)*

*moving to six-month certifications; and (3) requiring child support for Working Connections Child Care participants. WorkFirst savings is found through suspension of services and moving to performance based contracts. The budget estimates an \$11.8 million ending fund reserve to pay for any unforeseen costs."*

Section 11 of ESSB 5921 enacted two of the provisions noted in the budget overview document, by adding the following new subsections (2) and (3) to DEL's RCW 43.215-135:

*"(2) As a condition of receiving a child care subsidy or a Working Connections Child Care subsidy, the applicant or recipient must seek child support enforcement services from the Department of Social and Health Services, Division of Child Support, unless the department finds that the applicant or recipient has good cause not to cooperate."*

*"(3) Except as provided in subsection (4) of this section, an applicant or recipient of a child care subsidy or a Working Connections Child Care subsidy is eligible to receive that subsidy for six months before having to recertify his or her income eligibility. The six-month certification provisions applies only if enrollment in the child care subsidy or Working Connections Child Care program are capped."*

The legislature appropriated funding and adopted provisos specifically for implementation of ESSB 5921 in the 2011-2013 Operating Budget Act, 2ESHB 1087. Also, under EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.), the legislature extended the authority for agencies to adopt emergency rules to "*...implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013.*"

This rule meets the requirements of office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are "*required by state or federal law or required to maintain federally delegated or authorized programs;*" and "*necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities.*"

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 3, 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 3, Repealed 0.

Date Adopted: May 25, 2012.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3565 Consumers' responsibilities.**

When a ~~((consumer))~~ person applies for or receives SCC program subsidies, ~~((he or she))~~ the applicant or consumer must, as a condition of receiving those benefits:

(1) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities outside of the consumer's home;

(4) Pay the provider for child care services when the consumer requests additional child care for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS;

(5) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(6) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;

(7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(8) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; ~~((and))~~

(9) Provide the information requested by the DSHS fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her SCC program subsidies. If DSHS determines a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter~~(-)~~; and

(10) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in (a) of this subsection.

(a) For the purposes of this subsection, "good cause" also includes the following:

(i) The applicant or consumer has a current court order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;

(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance benefits requirements;

(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;

(iv) The applicant or consumer is a single-parent family when the other parent is deceased;

(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;

(vi) The applicants or consumers are both minor parents;

or  
(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases or cases outside of the United States.

(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3610 Countable income.** DSHS counts income as money a consumer earns or receives from:

(1) Wages and commissions earned from employment;

(2) Unemployment compensation;

(3) A TANF or other welfare grant;

(4) The following child support ~~((payments received))~~ payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-3565 (10)(a)(i), the amount as shown on a current court order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(5) Supplemental Security Income (SSI);

(6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

(7) Refugee assistance payments;

(8) Payments from the Veterans' Administration;

(9) Pensions or retirement income;

(10) Payments from labor and industries (L&I), or disability payments;

(11) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;

(12) Other types of income not listed in WAC 170-290-3630; and

(13) Gross wages from employment or self-employment income as defined in WAC 170-290-0003. Gross wages include any wages that are taxable.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3660 Eligibility period.** (1) A consumer who meets all of the requirements of part III of this chapter is eligible ~~((for))~~ to receive SCC subsidies for six months before having to redetermine his or her income eligibility. The six-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and 170-290-3501. Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than six months if requested by the consumer.

(3) A consumer's eligibility may end sooner than six months if:



(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

Date Adopted: May 18, 2012.

Katherine I. Vasquez  
Rules Coordinator

**WSR 12-12-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed May 29, 2012, 9:21 a.m., effective May 30, 2012]

Effective Date of Rule: May 30, 2012.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health (ADH) changes as required under 3ESHB 2127 (2012 supplemental budget).

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

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 3ESHB 2127.

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

Reasons for this Finding: The department added ADH services and eligibility into the community options program entry system (COPES) waiver effective September 1, 2011, as a result of the legislation action under 2ESHB 1087. In 3ESHB 2127, the legislature continued ADH services under the COPES waiver, so the department is proceeding with filing a CR-102 for a public hearing. This filing replaces and supersedes the CR-103E filed as WSR 12-04-055 on January 30, 2012.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

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

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

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

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

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

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

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

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

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

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

(b) You are unable to prepare the meal;

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

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

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

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

(b) Are beyond the amount, duration or scope of medic-aid reimbursed home health services as described in WAC ((388-551-2120)) 182-551-2120 and are in addition to those available services;

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

(d) Do not replace medicare home health services.

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

(i) You live alone in your own home;

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

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

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

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

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

(7) Skilled nursing, if the service is:

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

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC ((388-551-2100)) 182-551-2100.

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

(a) Medically necessary under WAC ((388-500-0005)) 182-500-0700;

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

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

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

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

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

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

(10) Transportation services, when the service:

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

(b) Is not diverting in nature; and

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

(11) Nurse delegation services, when:

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

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

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

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

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

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

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-

mergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Have referred care needs that:

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

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

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

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

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

or

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

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

**AMENDATORY SECTION** (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility?** If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced

adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPEs:

(1) Personal care services as defined under WAC 388-106-0010.

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

(a) Medically necessary under WAC 388-500-0005; and

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

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

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

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

(3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

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

(4) Transportation services, when the service:

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

(b) Is not diverting in nature;

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

(d) Does not replace the services required by DSHS contract in residential facilities.

(5) Skilled nursing, when the service is:

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

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

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

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

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

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

A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner

prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

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

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

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

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

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

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

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

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

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

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

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

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

(ii) Have referred care needs that:

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

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

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

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

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

or

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

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

**WSR 12-12-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-100—Filed May 31, 2012, 4:26 p.m., effective June 1, 2012]

Effective Date of Rule: June 1, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Yakama Nation and Washington department of fish and wildlife fishery managers are forecasting a harvestable return of adult hatchery spring chinook to the Yakima River in 2012. Opening the "Reservation Boundary Reach" (RBR) increases opportunity to harvest hatchery spring chinook in one of the most productive sections of the Yakima River for salmon fishing. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 31, 2012.

Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900A Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective June 1 through June 30, 2012, a person may fish for salmon in waters of the Yakima River from the SR 223 bridge in Granger (river mile 82.7) to the railroad bridge (river mile 103.6), which is located approximately 1,200 feet downstream of Sunnyside (Parker) Diversion Dam. Daily limit of two hatchery Chinook, minimum size 12 inches in length. Terminal gear is restricted to one, single (point), barbless hook with a hook gap from point to shank of 3/4 inch

or less when fishing for salmon. Use of bait is allowed. Night closure is in effect.

(2) Non-tribal members are required to purchase a Yakama Nation Hunting/Fishing Permit to participate in this fishery.

(3) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery (except for Free Fishing Weekend, June 9-10), in addition to a freshwater fishing license.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2012:

WAC 232-28-61900A      Exceptions to statewide  
 rules—Yakima River.

**WSR 12-12-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed June 1, 2012, 9:26 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Pursuant to RCW 74.08A.120, the department is establishing a state-funded food assistance program for legal immigrants (FAP) that will provide benefits at fifty percent of the federal supplemental nutrition assistance program (SNAP) benefit amount. Effective July 1, 2012, the department is amending WAC 388-400-0040 Am I eligible for benefits through the Washington Basic Food program?; 388-412-0015 General information about your food assistance allotments; 388-424-0020 How does my alien status impact my eligibility for Washington Basic Food program benefits?; 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period?; chapter 388-400 WAC to establish new section WAC 388-400-0050 If I am not eligible for federal benefits through the Washington Basic Food program because of my alien status, can I receive benefits through the state-funded food assistance program?; and chapter 388-424 WAC to establish new section WAC 388-424-0030 How does my alien status impact my eligibility for state-funded benefits under the food assistance program?

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0040, 388-412-0015, 388-424-0020, 388-489-0010 and 388-489-0025; and creating WAC 388-400-0050 and 388-424-0030.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.-120.

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

state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: On December 29, 2010, the department filed a rule-making order that eliminated the state-funded FAP, effective February 1, 2011.

On January 28 and February 17, 2011, the United States District Court for the Western District of Washington enjoined the department from eliminating FAP and ordered the department to continue to provide FAP benefits at one hundred percent of the level provided under SNAP.

On March 22, 2012, the Ninth Circuit Court of Appeals vacated the district court's preliminary injunction.

On April 11, 2012, the Washington legislature passed 3ESHB 2127, which provides the department with funding for FAP and establishes the FAP benefit to be one-half the federal SNAP benefit amount. The department will be ready to implement FAP at one-half the SNAP benefit amount on July 1, 2012.

Immediate adoption of these rules is necessary to ensure that state-funded food benefits are made legally available to persons in need as quickly as possible, and to ensure that FAP-eligible persons are made timely aware that FAP will be reestablished on July 1, 2012. Observation of time requirements for notice and comment is not in the public interest because it would delay legal availability of FAP benefits.

In addition, to the extent that state-funded FAP benefits are made legally available to eligible persons, the department must immediately comply with RCW 74.08A.120 and 3ESHB 2127, which establish FAP benefits at one-half the value of federal SNAP benefits.

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 2, Amended 4, 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 2, Amended 4, Repealed 0.

Date Adopted: May 22, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-02-035, filed 12/29/10, effective 2/1/11)

**WAC 388-400-0040 Am I eligible for benefits through the Washington Basic Food program?** The Washington Basic Food program (Basic Food) is a federally-funded nutrition program to help low-income individuals and families buy food. This rule is a summary of the rules for Basic Food.

(1) When you apply for Basic Food, we decide who is in your assistance unit (AU) based on the requirements under WAC 388-408-0034 and 388-408-0035.

(2) To be eligible for Basic Food benefits, your AU must meet the eligibility requirements (~~for the federal supplemental nutrition assistance program (SNAP) including~~) of:

(a) The most current version of the Food and Nutrition Act of 2008;

(b) Federal regulations adopted by the U.S. Department of Agriculture, Food and Nutrition Services (FNS) related to the supplemental nutrition assistance program (SNAP); and

(c) Standards FNS publishes each year for income limits, resource limits, income deductions, and benefit amounts for SNAP.

(3) To be eligible for Basic Food benefits, each AU member must:

(a) Meet the citizenship or alien status requirements (~~for Basic Food benefits as described under~~) of WAC 388-424-0020.

(b) Be a resident of the state of Washington as required under WAC 388-468-0005;

(c) Give us their Social Security number as required under WAC 388-476-0005;

(d) Give us proof of identity as required under WAC 388-490-0005;

(e) (~~Participate in the Basic Food employment and training program (BFE&T) if required~~) Meet the Basic Food work requirements under chapter 388-444 WAC; and

(f) Meet the eligibility criteria for strikers as described under WAC 388-480-0001.

(4) To be eligible for Basic Food, your AU must:

(a) Have total monthly income before taxes and deductions at or under the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as part of your AU's gross monthly income;

(b) Have net income at or under the net monthly income standard under WAC 388-478-0060. We subtract deductions allowed under WAC 388-450-0185 to determine your AU's net monthly income.

(c) Have resources we must count under WAC 388-470-0055 that are at or below your AU's resource limit under WAC 388-470-0005;

(d) Report changes of circumstances as required under WAC 388-418-0005; and

(e) Complete a mid-certification review and provide proof of any changes if required under WAC 388-418-0011.

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

(6) If your AU has income at or under the gross income standard or is categorically eligible for Basic Food, we determine if you are eligible for Basic Food and calculate your monthly benefits as described under WAC 388-450-0162.

(7) If an eligible person in your AU is elderly or disabled, some rules may help your AU to be eligible for Basic Food or to receive more Basic Food benefits. These include:

(a) Resources limits and excluding certain resources under chapter 388-470 WAC;

(b) An excess shelter deduction over the limit set for AUs without an elderly or disabled individual under WAC 388-450-0190;

(c) A deduction for a portion of the out-of-pocket medical expenses for the elderly or disabled individual as described under WAC 388-450-0200; and

(d) Being exempt from the **gross monthly income** standard under WAC 388-478-0060.

(8) For Basic Food, **elderly** means a person who is age sixty or older;

(9) For Basic Food, **disabled** means a person who:

(a) Receives SSI;

(b) Receives disability payments or blindness payments under Title I, II, XIV, or XVI of the Social Security Act;

(c) Receives disability retirement benefits from a state, local or federal government agency because of a disability considered permanent under section 221(i) of the Social Security Act;

(d) Receives disability benefits from the Railroad Retirement Act under sections 2 (a)(1)(iv) and (v) and:

(i) Meets Title XIX disability requirements; or

(ii) Is eligible for medicare.

(e) Receives disability-related medical assistance under Title XIX of the Social Security Act;

(f) Is a veteran and receives disability payments based on one hundred percent disability;

(g) Is a spouse of a veteran and:

(i) Either needs an attendant or is permanently house-bound; or

(ii) Has a disability under section 221(i) of the Social Security Act and is eligible for death or pension payments under Title 38 of the USC.

(10) If a person in your household attends an institution of higher education and does not meet the requirements to be an eligible student under WAC 388-482-0005, we do not count this person as a member of your AU under WAC 388-408-0035.

(11) If your AU currently receives food benefits under WASHCAP or lives on or near an Indian reservation and receives benefits from a tribal food distribution program approved by FNS, your AU is not eligible for food assistance benefits through the Washington Basic Food program.

(12) If a person in your AU is ineligible for any of the following reasons, we count the ineligible person's income as described under WAC 388-450-0140:

(a) Able-bodied adults without dependents who are no longer eligible under WAC 388-444-0030;

(b) Persons fleeing a felony prosecution, conviction, or confinement under WAC 388-442-0010;

(c) Persons who do not attest to citizenship or alien status as defined in WAC 388-424-0001;

(d) Persons who are ineligible aliens under WAC 388-424-0020;

(e) Persons disqualified for an intentional program violation under WAC 388-446-0015;

(f) Persons who do not provide a Social Security number when required under WAC 388-476-0005; or

(g) Persons who failed to meet work requirements under chapter 388-444 WAC.

NEW SECTION

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

(a) You are a Washington state resident; and

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

**WAC 388-412-0015 General information about your food assistance allotments.** (1) Your monthly allotment under the Washington Basic Food program, food assistance program for legal immigrants (FAP), Washington combined

application project (WASHCAP), or the transitional food assistance (TFA) programs is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

**(2) How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally-funded Basic Food as described under WAC 388-450-0162 ~~((if your AU has income))~~;

~~(b) ((If your AU does not have countable income you receive))~~ We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

**(3) Maximum allotment:**

~~(a)~~ The maximum allotment for the number of ~~((eligible))~~ people in your AU eligible for federally-funded Basic Food benefits is described under WAC 388-478-0060.

~~((3))~~ ~~(b)~~ The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

**(4) Prorated benefits in the first month** - If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

~~((4))~~ **(5) Combined allotment for first and second month's benefits** - If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for food assistance, we issue both the first and second months benefits in one allotment if you are eligible for both months.

~~((5))~~ **(6) Minimum allotment** - ~~((If your AU has one or two members, your monthly allotment will be at least sixteen dollars unless))~~ Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

~~(a) ((It is the first month of your certification period;))~~ Sixteen dollars if your AU has one or two members, and at least one person is eligible for federally-funded Basic Food.

~~(b) ((Your AU is eligible for only a partial month; and~~

~~(e) We reduced your first month's allotment below sixteen dollars based on the date you became eligible for food assistance under WAC 388-406-0055))~~ Eight dollars if your AU has one or two members, and all members of your AU are eligible for state-funded FAP.

~~((6))~~ **(7) Use of food assistance benefits** - Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 11-02-035, filed 12/29/10, effective 2/1/11)

**WAC 388-424-0020 How does my alien status impact my eligibility for ~~((Washington))~~ federally-funded Basic Food ~~((program))~~ benefits?** (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a) or (b) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;
- (vi) Special immigrant from Iraq or Afghanistan;
- (vii) Victim of trafficking;
- (viii) Noncitizen American Indian; or
- (ix) Hmong or Highland Lao tribal member.

(b)(i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- (A) Conditional entrant;
- (B) Lawful permanent resident (LPR);
- (C) Paroled for one year or more; or
- (D) Abused spouse or child or parent or child of an abused spouse or child.

(ii) And, one of the following also applies to you:

(A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007;

(C) You receive cash or medical benefits based on Supplemental Security Income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

**(3) If you are a legal immigrant not eligible for federal benefits under Basic Food only because of your alien status, you may be eligible state-funded food assistance program (FAP) benefits under WAC 388-400-0050.**

NEW SECTION

**WAC 388-424-0030 How does my alien status impact my eligibility for state-funded benefits under the food assistance program?** (1) If you are not a citizen and are not eligible for federally-funded Basic Food benefits, you may be eligible for state-funded benefits under the food assistance

program (FAP) if you are a legal immigrant. This means you must be one of the following:

(a) A "qualified alien" as defined in WAC 388-424-0001, who does not meet the eligibility requirements under WAC 388-424-0020 to receive federally-funded Basic Food benefits; or

(b) A "nonqualified alien" as described in WAC 388-424-0001 who:

(i) Is not a nonimmigrant as described in WAC 388-424-0001(d);

(ii) Intends to stay in the United States indefinitely; and

(iii) The United States Immigration and Customs Enforcement is not taking steps to enforce your departure.

(2) If you are eligible for state-funded FAP, we calculate your benefits as described under WAC 388-400-0050.

**AMENDATORY SECTION** (Amending WSR 11-02-035, filed 12/29/10, effective 2/1/11)

**WAC 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period?** Your transitional food assistance benefits will end early if:

(1) Someone who gets transitional food assistance with you applies and is approved for temporary assistance for needy families while still living in your home. You may reapply to have your eligibility for Basic Food determined;

(2) We learn that you and your household are no longer residing in the state of Washington; or

(3) **All members** of your household are ineligible to get Basic Food for any of the following reasons:

(a) Refusal to cooperate with quality assurance (WAC 388-464-0001);

(b) Transfer of property to qualify for Basic Food assistance (WAC 388-488-0010);

(c) Intentional program violation (WAC (~~388-466-0015~~ ~~{388-446-0015}~~) 388-446-0015 and 388-446-0020);

(d) Fleeing felon or violating a condition of probation or parole (WAC 388-442-0010);

(e) Alien status (WAC 388-424-0020 and 388-424-0030);

(f) Employment and training requirements (WAC 388-444-0055 and 388-444-0075);

(g) Work requirements for able-bodied adults without dependents (WAC 388-444-0030);

(h) Student status (WAC 388-482-0005);

(i) Living in an institution where residents are not eligible for Basic Food (WAC 388-408-0040); or

(j) Deceased.

Purpose: The department is proposing to amend by emergency adoption WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.

The department is proposing to increase the cash assistance grant maximum to an eight person household for temporary assistance for needy families (TANF), state family assistance (SFA) and refugee cash assistance (RCA) starting July 1, 2012. The current grant maximum cannot exceed seven hundred and twenty-six dollars. This change may affect households with six or more members.

This change is necessary to comply with the 2011-2013 revised omnibus operating budget as mandated under 3ESHB 2127, Laws of 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, and 74.08.-090.

Other Authority: 3ESHB 2127.

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

Reasons for this Finding: See above.

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: May 23, 2012.

Katherine I. Vasquez  
Rules Coordinator

**WSR 12-12-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed June 1, 2012, 9:27 a.m., effective June 1, 2012, 9:27 a.m.]

Effective Date of Rule: Immediately.

**AMENDATORY SECTION** (Amending WSR 11-21-024, filed 10/11/11, effective 11/11/11)

**WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.** (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum



and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC 388-478-0040 and 388-478-0045).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on their obligation to pay for shelter.

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.

(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.

(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.

(4) (~~Effective May 1, 2011~~) Starting July 1, 2012, the monthly cash assistance grant for an assistance unit cannot exceed (~~seven hundred and twenty six dollars~~) the payment standard for a family of eight listed in WAC 388-478-0020 (1).

### WSR 12-12-050

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 12-101—Filed June 1, 2012, 11:12 a.m., effective June 2, 2012]

Effective Date of Rule: June 2, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Upper Wheeler Reservoir is owned and operated by the Wenatchee Heights Reclamation District (WHRD) and has been closed to public access. Washington department of fish and wildlife has made arrangements with WHRD and the Wenatchee Valley Fly Fishers to grant public access to recreational anglers under "fly fishing only" regulations. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: June 1, 2012.

Philip Anderson

Director

### NEW SECTION

**WAC 232-28-61900B Exceptions to statewide rules—Upper Wheeler Reservoir.** Notwithstanding the provisions of WAC 232-28-619, effective June 2, 2012, until further notice, a person may fish in waters of Upper Wheeler Reservoir. Flying fishing only; trout: Catch and release only. Statewide minimum size and daily limits are in effect for all other game fish. Fishing from a floating device equipped with a motor is prohibited, and the two-pole endorsement is not valid.

**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 12-12-052

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 12-102—Filed June 4, 2012, 9:25 a.m., effective June 6, 2012, 12:01 a.m.]

Effective Date of Rule: June 6, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Catch Areas 23A-S and 23D [to] spot shrimp fishing; and (2) lowers the weekly spot shrimp harvest limit in Catch Areas 23C and 29. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 4, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-05100H 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, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

ii) All waters of Shrimp Management Area 1A north of a line projected at 48° 31.5' N latitude are closed.

(b) All waters of Catch Areas 23C and 29 are open to the harvest of all shrimp species, effective immediately until further notice.

(c) All waters of Catch Areas 23A-S and 23D are closed to the harvest of spot shrimp, effective immediately until further notice.

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

(e) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, effective immediately until further notice.

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

(g) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

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

(b) That portion of Catch Area 22A within SMA 1B is open, effective immediately until further notice.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 6, 2012.

WAC 220-52-05100G Puget Sound shrimp beam trawl fishery—Season. (12-64)

#### **WSR 12-12-071**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 12-103—Filed June 5, 2012, 4:36 p.m., effective June 5, 2012, 4:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp. The state recreational share of spot shrimp will have been taken in the southern portion of Marine Area 7. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 5, 2012.

Philip Anderson  
Director

### NEW SECTION

#### **WAC 220-56-32500D Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-325:

1) Effective June 7, 2012, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section:

a. Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary:

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

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

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

3) Marine Area 13 is open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

4) Effective immediately until further notice, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5 and 6, are open to the harvest of all shrimp species.

### **WSR 12-12-072**

#### **EMERGENCY RULES**

#### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed June 5, 2012, 4:40 p.m., effective June 5, 2012, 4:40 p.m.]

Effective Date of Rule: Immediately.

Purpose: Changes to WAC 392-343-025 State funding assistance percentate [percentage]—General and 392-343-045 Space allocations—Enrollment projections provision.

Changes are necessary to respond to language in SSB 6002 that requires immediate implementation for revised K-linear cohort projection methodology and new funding assistance percentages (matching) ratios affecting projects [proj-

ects] expected to qualify for school construction assistance program funding in July 2012 release.

Citation of Existing Rules Affected by this Order: Amending WAC 392-343-025 and 392-343-045.

Statutory Authority for Adoption: 28A-525-020 [RCW 28A.525.020] Duties of superintendent of public instruction.

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

Reasons for this Finding: In 2012, the legislature enacted legislation that made changes to the state funding formula for school construction assistance. The emergency rule adoption is necessary to implement the change in order to determine the amount of state funding assistance for districts with projects qualifying for the upcoming July 2012 state funding assistance release.

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

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

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

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

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

Date Adopted: June 5, 2012.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

**WAC 392-343-025 State funding assistance percentage—General.** (1) The state funding assistance percentage for which a school district is eligible, if otherwise qualified under prevailing statutory provisions and rules and regulations of the superintendent of public instruction, shall be determined in accordance with the state funding assistance percentage formula set forth in RCW 28A.525.166.

(2) In the event the state funding assistance percentage to any school district computed in accordance with RCW 28A.525.166(2) is less than twenty percent and such school district otherwise is eligible for state funding assistance under statutory provisions and the superintendent of public instruction regulations, the percentage for such district shall be twenty percent of the state allowable costs of the project.

(3) In addition to the computed state funding assistance percentage as stated above, a school district as provided in RCW 28A.525.166(3), shall be entitled to additional percentage points determined by the average percentage of growth for the past three years. One percent shall be added to the

computed state funding assistance percentage for each average percent of student growth for the past three years, with a maximum addition of twenty percent. In no case shall the state funding assistance exceed one hundred percent of the maximum allowable cost of the project.

(4) For the purpose of calculating the state funding assistance percentage, the October student headcount of kindergarten through grade twelve students shall be based on enrollment reported on the October P-223 and shall exclude alternative learning experience students as defined by RCW 28A.150.325 and reported on the October School Apportionment and Financial Services Alternative Learning Experience enrollment report who reside outside the school district, provided that districts may, by June 15, 2012, request the superintendent of public instruction to include such students in their October student headcount as follows:

(a) Districts must report the number of alternative learning experience students residing outside the district in October student headcount with documentation supporting that the student(s) physically attended the school for more than one hour per day for three days or more per week.

(b) Districts must report the number of alternative learning experience students residing inside the district in the October student headcount that did not have documentation supporting the student(s) attendance at the school for more than one hour per day for three days or more per week.

(c) After review of the information provided in (a) and (b) of this subsection the superintendent of public instruction may include the difference between (a) and (b) of this subsection in the calculation of state funding assistance.

(d) This subsection takes effect beginning with the October 2010 student enrollment counts and immediately affects all projects without state secured funding per WAC 392-341-055 and that have either already attained or will attain approval from the superintendent of public instruction pursuant to WAC 392-341-040 and if applicable pursuant to WAC 392-343-030.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

**WAC 392-343-045 Space allocations—Enrollment projection provisions.** In planning for construction of all school facilities, a school district shall estimate capacity needs on the basis of the following:

- (1) A three or five-year cohort survival enrollment projection for growth districts, whichever is greater;
- (2) A three or five-year cohort survival enrollment projection for a declining district, whichever is lesser;
- (3) Actual enrollment of preschool students with developmental disabilities; and
- (4) Supplemental information regarding district growth factors which may include but not be limited to the following types of information:
  - (a) County live birth rates;
  - (b) New housing starts;
  - (c) Utility/telephone hookups; and
  - (d) Economic/industrial expansion.

(5) For the purposes of this section, ((kindergarten students and students with developmental disabilities shall be

counted as provided under WAC 392-343-035 and all other grade one through twelve students shall be counted as October count day full-time equivalent students as reported to the superintendent of public instruction. Provided, That a school district which has or has had an annual average full-time equivalent enrollment of over five hundred, and which applied for and received additional state basic education allocation moneys based upon an enrollment increase after the first of the month enrollment count, may use the average of the two highest monthly full-time equivalent enrollment counts during the school year)) students with developmental disabilities shall be counted as provided under WAC 392-343-035. All other kindergarten through grade twelve students shall be counted based on their reported enrollment on the October P-223 and shall exclude alternative learning experience students as defined by RCW 28A.150.325 and reported on the October School Apportionment and Financial Services Alternative Learning Experience enrollment report who reside outside the school district, provided that districts may, by June 15, 2012, request the superintendent of public instruction to include such students in their October student headcount as follows:

(a) Districts must report the number of alternative learning experience students residing outside the district in the October student headcount with documentation supporting that student(s) physically attended the school for more than one hour per day for three days or more a week.

(b) Districts must report the number of alternative learning experience students residing inside the district in the October student headcount that did not have documentation supporting the student(s) attendance at the school for more than one hour per day for three days or more per week.

(c) After review of the information provided in (a) and (b) of this subsection the superintendent of public instruction may include the difference between (a) and (b) of this subsection in the calculation of state funding assistance.

(d) This subsection takes effect beginning with the October 2010 student enrollment counts and immediately affects all projects without state secured funding per WAC 392-341-055 and that have either already attained or will attain approval from the superintendent of public instruction pursuant to WAC 392-341-040.