

**WSR 12-13-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed June 6, 2012, 1:09 p.m., effective June 7, 2012]

Effective Date of Rule: June 7, 2012.

Purpose: The division of child support (DCS) is repealing three sections and adopting new sections and/or amendments in chapter 388-14A WAC to implement section 5 of SSB 6386 (chapter 253, Laws of 2012) and the technical amendments contained in HB 2828 (chapter 4, Laws of 2012). Both bills have an effective date of June 7, 2012.

Families applying for a child care subsidy on or after June 7, 2012, will not be required to apply for DCS services as a condition of eligibility. DCS will be unable to complete the regular adoption process by the effective date of these bills. DCS is adopting these emergency rules, but at the same time is commencing the regular rule-making process by filing a CR-101 Preproposal statement of inquiry, and will adopt the final rules as soon as possible.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-14A-2007, 388-14A-2042, and 388-14A-2093; and amending WAC 388-14A-2040, 388-14A-2045, 388-14A-2050, and 388-14A-2075.

Statutory Authority for Adoption: Section 5 of SSB 6386 (chapter 253, Laws of 2012) and HB 2828 (chapter 4, Laws of 2012); RCW 34.05.350 (1)(b), 43.20A.550, 74.04.-055, 74.08.090, 74.20.040.

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: Section 5 of SSB 6386 (chapter 253, Laws of 2012) and the technical amendments contained in HB 2828 (chapter 4, Laws of 2012) repeal the provisions included in sections 9,10, and 11 of ESSB 5921 (chapter 42, Laws of 2011) which made application to DCS for child support enforcement services a condition of eligibility for a child care subsidy. This requirement is terminated effective June 7, 2012. Families applying for a child care subsidy on or after June 7, 2012, will not be required to apply for DCS services as a condition of eligibility.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 3.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.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 4, Repealed 3.

Date Adopted: May 17, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-23-087, filed 11/17/11, effective 12/18/11)

**WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?** (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020.

~~(2) ((You must cooperate with the division of child support (DCS) when you receive a child care subsidy, unless the department determines there is good cause not to cooperate under WAC 388-422-0020 or another rule of the department of early learning (DEL).~~

~~(3))~~ As described in WAC 388-14A-2080, DCS may close a nonassistance case if the custodial parent (CP) fails to cooperate, if cooperation is essential for the next step in enforcement.

~~((4))~~ (3) For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who receives assistance must cooperate whether or not the parent receives assistance.

~~((5))~~ (4) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

- (a) Identify and locate the responsible parent;
- (b) Establish the paternity of the child(ren) on assistance in the CP's care; and
- (c) Establish or collect support payments or resources such as property due the CP or the child(ren).

~~((6))~~ (5) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

~~((7))~~ (6) The cooperation requirements of subsections (1), (3) and (4) ~~((and (5)))~~ above, but not subsection ~~((6))~~ (5), apply to a recipient of medicaid-only assistance.

~~((8) The cooperation requirements of subsections (2), (4) and (5) above, but not subsection (6), apply to a recipient of a child care subsidy.)~~

AMENDATORY SECTION (Amending WSR 11-23-087, filed 11/17/11, effective 12/18/11)

**WAC 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children?** (1) If a custodial parent (CP) receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the

children, the CP may be excused from the cooperation requirements. The CP must contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020. The CP may claim good cause:

- (a) At the time of application for public assistance; or
- (b) At any time thereafter.

(2) If a CP who is not receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP should tell the division of child support (DCS) that family violence is an issue in the case, so that DCS may take appropriate action. The CP may ask DCS to close the nonassistance support enforcement case.

~~((3) If a CP who receives a child care subsidy but does not receive public assistance claims good cause not to comply with the requirement to seek support enforcement services, the department of early learning (DEL) or CSD may grant good cause, either under WAC 388-422-0020 or under DEL rules.~~

~~(a) If the CP does not claim good cause at the time the child care subsidy is granted, the CP may later claim good cause by contacting CSD.~~

~~(b) If the CP requests DCS to close a nonassistance case, DCS notifies CSD that the case has been closed. The CP may claim good cause if CSD takes action to sanction the CP for closing the DCS case:))~~

AMENDATORY SECTION (Amending WSR 11-23-087, filed 11/17/11, effective 12/18/11)

**WAC 388-14A-2050 Who decides if I have good cause not to cooperate?** (1) The community services division (CSD) decides whether you have good cause not to cooperate with the division of child support (DCS). You must tell CSD if you want to claim good cause.

(a) CSD determines good cause under WAC 388-422-0020 ~~((or under the rules adopted by the department of early learning (DEL)))~~.

(b) You may claim good cause at the time you apply for public assistance ~~((or for a child care subsidy))~~, or at any time thereafter.

(2) When you make a claim of good cause not to cooperate, DCS does not take any action on your case while CSD is reviewing your good cause claim.

~~((3) If you are not receiving public assistance but are applying for a child care subsidy, you may be granted good cause and not be required to apply for child support enforcement services:))~~

AMENDATORY SECTION (Amending WSR 11-23-087, filed 11/17/11, effective 12/18/11)

**WAC 388-14A-2075 What happens if the division of child support determines that I am not cooperating?** (1) When the division of child support (DCS) or its representatives believe that a custodial parent (CP) who receives cash assistance or medical assistance is not cooperating as defined in WAC 388-14A-2040, DCS sends a notice to the CP and to the community services division (CSD) about the noncooperation.

(a) The notice contains the following information:

(i) How the noncooperation was determined, including what actions were required;

(ii) What actions the CP must take to resume cooperation;

(iii) That this notice was sent to CSD;

(iv) That the CP may contact CSD immediately if the CP disagrees with the notice, needs help in order to cooperate, or believes the actions required are unreasonable; and

(v) That CSD may sanction the CP by either reducing or terminating the grant.

(b) CSD sends a notice of planned action to the CP as provided by WAC 388-472-0005 (1)(i).

(c) Either the notice of alleged noncooperation or CSD's notice of planned action may serve as the basis for a sanction.

(d) If the noncooperation was due to missing an interview without reasonable excuse, the CP will be considered to be cooperating when the CP appears for a rescheduled interview and either provides information or attests to the lack of information. DCS or its representative must reschedule the interview within seven business days from the date the CP contacts them to reschedule an interview.

(e) If the noncooperation was due to not taking a required action, cooperation resumes when the CP takes that action.

(2) There is no hearing right for a notice of noncooperation, but the CP may request a hearing on the sanction imposed by CSD.

~~(3) ((When DCS or its representatives believe that a CP who does not receive public assistance but does receive a child care subsidy is not cooperating, and that cooperation is essential for the next step in establishment or enforcement, DCS sends a notice of case closure to the CP.~~

~~(a) The notice of case closure contains the following information:~~

~~(i) That DCS cannot take the next step in establishment or enforcement because of the CP's failure to cooperate;~~

~~(ii) What actions the CP must take to resume cooperation;~~

~~(iii) The DCS will notify CSD of case closure;~~

~~(iv) That DCS may close the nonassistance case if the CP does not cooperate within sixty days; and~~

~~(v) That CSD may sanction the CP. Any sanctions for failure to cooperate are determined by CSD.~~

~~(4))~~ If the CP takes the actions required to resume cooperation within sixty days, DCS leaves the case open and continues to establish or enforce the support obligation.

~~((5))~~ (4) The CP may request a hearing to contest case closure, as described in WAC 388-14A-2095.

~~((6) If DCS closes the case due to noncooperation, a CP who does not receive public assistance but does receive a child care subsidy may request a hearing on the sanction imposed by CSD:))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-14A-2007

Does an application for subsidized child care automati-

- WAC 388-14A-2042 cally become an application for support enforcement services?  
What happens if I don't cooperate with DCS while I receive a child care subsidy?
- WAC 388-14A-2093 Who receives notice of DCS' intent to close a case when the custodial parent receives a child care subsidy?

**WSR 12-13-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medicaid Program)

[Filed June 6, 2012, 1:10 p.m., effective June 10, 2012]

Effective Date of Rule: June 10, 2012.

Purpose: To establish hearing rules related to medicaid funded services to implement the requirements of 2E2SBH [2E2SHB] 1738, section 53, effective July 1, 2011, for the transition of the single state medicaid agency to the Washington health care authority.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-526-2610.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 2E2SHB 1738, section 53.

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: 2E2SHB 1738, section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the *immediate* preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011.["] Delaying this adoption could jeopardize the agency's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW. This emergency rule is necessary to continue the current emergency rule adopted under WSR 12-05-037 while the permanent rule-making process is completed. This emergency rule differs from the current emergency rule in that the definition of review judge was revised. The agency filed a CR-101 Preproposal statement of inquiry under WSR 11-19-004 on September 7, 2011, has completed internal review, and is currently preparing to send an external review

to interested stakeholders. The agency anticipates filing the CR-102 for public hearing on or before July 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 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 137, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 137, Amended 0, Repealed 1.

Date Adopted: May 30, 2012.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-14 issue of the Register.

**WSR 12-13-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed June 6, 2012, 1:27 p.m., effective June 7, 2012]

Effective Date of Rule: June 7, 2012.

Purpose: The division of child support (DCS) is adopting this emergency rule to implement HB 2393 (chapter 109, Laws of 2012), which amended RCW 26.23.040 to comply with changes in federal law regarding new hire reporting requirements. HB 2393 takes effect on June 7, 2012. DCS is amending WAC 388-14A-8200 by this filing.

DCS will be unable to complete the regular adoption process by the effective date of HB 2393. DCS is adopting this emergency rule, but at the same time is commencing the regular rule-making process by filing a CR-101 Preproposal statement of inquiry, and will adopt the final rule as soon as possible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-8200.

Statutory Authority for Adoption: HB 2393 (chapter 109, Laws of 2012); RCW 26.23.040(1), 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20A.310.

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

Reasons for this Finding: The statute regarding employer reporting is a state plan requirement for the child support program under Title IV-D of the federal Social Security Act (42 U.S.C. 653A(b)). HB 2393 was adopted to implement changes to federal law contained in two acts: (1)

The Claims Resolution Act of 2010 (PL 111-291), which among other things makes changes to employer reporting requirements. Under this new provision, employers are now required to report, among other elements, the date that an employee first performs services for pay; and (2) the Trade Adjustment Assistance Extension Act of 2011 (PL 112-40), which in Section 253 amends 42 U.S.C. 653a (a)(2) to provide a definition of the term "newly-hired employee," a term which was not previously defined. A state's employer reporting statute must contain the new definition.

Failure to enact these requirements into state law could have resulted in a state plan violation for Washington state, which would jeopardize all federal funding for Washington's child support enforcement and temporary assistance for needy families programs.

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

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

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

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

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

Date Adopted: May 18, 2012.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-8200 All Washington employers must report new hires to the Washington state support registry.** (1) RCW 26.23.040 requires all employers doing business in the state of Washington to comply with the employer reporting requirements regarding new hires.

(2) For the purposes of this section, a "new hire" is defined as any person who resides or works in the state of Washington to whom the employer anticipates paying earnings and who:

(a) Has not previously been employed by the employer;  
or

(b) Was previously employed by the employer but has been separated from such employment for at least sixty consecutive days.

(3) The minimum information that an employer must report is the employee's name, date of birth, Social Security number (~~and~~), and date of hire.

(a) For purposes of this section, the "date of hire" is defined as the date on which the employee first performed services for pay for the employer.

(b) The "date of hire" of an employee described in subsection (2)(b) of this section, is the date on which the

employee returned to perform services for pay after a layoff, furlough, separation, or leave without pay.

~~((3))~~ (4) Employers must report the required information to the Washington State Support Registry (WSSR). An employer may report using the employee's W-4 form or any equivalent form, and may submit the information by:

(a) First class mail;

(b) Fax;

(c) Electronic transmission; or

(d) Any other means authorized by the WSSR which will result in timely reporting.

(5) An employer who submits a copy of the employee's completed W-4 form complies with the (~~filling~~) reporting requirements of RCW 26.23.040(3).

~~((4))~~ (6) If an employer reports by submitting a W-4 form, the employer may choose to (~~voluntarily~~) report the (~~other~~) additional statutory elements by writing or typing the employee's date of birth and date of hire on the form.

## WSR 12-13-008

### EMERGENCY RULES

### DEPARTMENT OF

### FISH AND WILDLIFE

[Order 12-106—Filed June 7, 2012, 10:43 a.m., effective June 7, 2012, 10:43 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500N; 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: The Marine Area 2 recreational halibut fishery is projected to take the Pacific halibut quota set aside for the northern nearshore area by the end of the day June 8, 2012. There is sufficient quota remaining in the north coast subarea to reopen the recreational halibut fishery for another day of fishing. There is sufficient quota to reopen the fishery on a Thursday but not enough to reopen on a Saturday without risk of exceeding the quota. This rule conforms to federal action taken by the National Marine Fisheries Service (NMFS) and the International Pacific Halibut Commission (IPHC). 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 7, 2012.

Philip Anderson  
Director

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

(8) All other permanent rules remain in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500N Halibut—Seasons—Daily and possession limits. (12-96)

#### NEW SECTION

**WAC 220-56-25500P 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.

(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 through June 8, 2012:

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 June 14, 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 through June 23, 2012, Thursdays, Fridays and Saturdays.

(5) **Catch Record Card Areas 6, 7, 8, 9, 10, 11, 12 and 13** - Closed.

(6) 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.

#### **WSR 12-13-011 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 12-105—Filed June 7, 2012, 4:32 p.m., effective June 7, 2012, 4:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900G and 220-55-22000C; and amending WAC 232-28-619 and 220-55-220.

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 Washington and Oregon departments of fish and wildlife adopted the Bonneville Pool sturgeon retention summer fishery guidelines. The upcoming season includes all tributaries. A balance of 1,060 fish remains within this year's sturgeon guideline for Bonneville Pool and its tributaries. To help ensure that the overall catch remains within the guideline, this emergency regulation change makes the number of rods allowed per angler at Wind River and Drano Lake consistent with the adjacent mainstem Columbia. 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 2, Amended 0, Repealed 2.

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

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

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

Date Adopted: June 7, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-55-22000D Two-pole endorsement.** Notwithstanding the provisions of WAC 220-55-220, WAC 232-28-619, WAC 232-28-620 and WAC 232-28-621, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Anglers who are in possession of a valid two-pole endorsement may fish with two poles in the following river sections during open seasons:

(a) Columbia River - From Priest Rapids Dam to Wanapum Dam, from Wanapum Dam to Wells Dam, from Wells Dam to the Highway 173 Bridge at Brewster, and from the Highway 173 Bridge at Brewster to Chief Joseph Dam.

(b) Cowlitz River - Lexington Bridge Drive at Lexington upstream to the Highway 505 Bridge in Toledo.

(c) Drano Lake - Waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery. However not valid June 15, 16, 22 and 23.

(d) Lewis River - From the railroad bridge near Kuhns Road upstream to the mouth of East Fork Lewis River.

(e) Lewis River, North Fork - From the mouth to Johnson Creek.

(f) Wind River - From the mouth to the Burlington Northern Railroad Bridge, except not valid June 15, 16, 22 and 23.

(2) Anglers who are in possession of a valid two-pole endorsement may fish with two poles in the following marine areas during open seasons:

(a) Willapa Bay - Area 2.1 east of line from Cape Shoalwater to Leadbetter Point.

(b) Port Susan and Port Gardner Area 8.2, Tulalip Terminal Area - waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-22000C Two-pole endorsement. (12-80)

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-56-22000C is probably intended to be WAC 220-55-22000C.

#### NEW SECTION

**WAC 232-28-61900I Freshwater exceptions to state-wide rules—2012 North of Falcon Eastern Washington rivers and Columbia River.** Notwithstanding the provisions

of WAC 232-28-619 and WAC 220-55-255, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

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

North Jetty: Barbed hooks allowed for salmon 7 days per week when Marine Area 1 or Buoy 10 are open for salmon.

a. From the Highway 395 Bridge at Pasco to Priest Rapids Dam, except Ringold Spring Creek (Hatchery Creek): Salmon: Open June 16 through July 31. Daily limit 6 fish, of which no more than 2 may be adult hatchery Chinook. Release wild Chinook.

b. Ringold Area Bank Fishery waters (from WDFW markers 1/4 mile downstream from the Ringold wastewater outlet, to WDFW markers 1/2 mile upstream from Spring Creek): Trout and salmon fishing closed immediately through June 15. From June 16 until further notice, same rules as the adjoining Columbia River.

c. From Priest Rapids Dam to Wells Dam: All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing from July 1 through August 31. Salmon: Open July 1 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

d. From Wells Dam to Highway 173 Bridge at Brewster: All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing from July 16 through August 31. Salmon: Open July 16 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

e. From Highway 173 Bridge at Brewster to Chief Joseph Dam: All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing from July 1 through August 31. Salmon: Open July 1 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

#### **2. Cowlitz River (Lewis County):**

**From Lexington Bridge Drive in Kelso upstream to the Highway 505 Bridge in Toledo:**

All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

#### **3. Klickitat River (Klickitat County):**

From mouth to Fisher Hill Bridge: When anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

#### **4. Lewis River (Clark County):**

From railroad bridge near Kuhns Road upstream to mouth of East Fork Lewis: Anglers in possession of a valid two pole endorsement may use up to two lines while fishing.

**5. Lewis River, North Fork (Clark/Skamania counties):**

From mouth to Johnson Creek: Anglers in possession of a valid two pole endorsement may use up to two lines while fishing.

**6. Little White Salmon River (Skamania County):**

Drano Lake (waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery): All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing, effective immediately through June 30, except June 15, 16, 22, and 23.

(a) **White Salmon River (Klickitat/Skamania counties): From county road bridge below powerhouse to Northwestern Lake Road Bridge:** Closed waters.

(b) **White Salmon River (Klickitat/Skamania counties): From Northwestern Lake Road Bridge to 400 feet below Big Brother's Falls at River Mile 16:** Closed waters: from Big Brother's Falls downstream 400 feet. All game fish: Effective first Saturday in June, catch and release, except up to 2 hatchery steelhead may be retained. Selective gear rules in effect.

**7. Okanogan River (Okanogan County): Salmon: Open July 1 until further notice. Daily limit 6 Chinook and 6 sockeye only.** Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

**8. Similkameen River (Okanogan County):**

**From the mouth to Enloe Dam:** Salmon: Open July 1 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

**9. Wind River (Skamania County):**

**From mouth to 400 feet below Shipherd Falls:** Salmon and Steelhead: Open immediately through July 31. Fishing for trout (except hatchery steelhead) is closed. From mouth to railroad bridge, anglers in possession of a valid two pole endorsement may use up to two lines while fishing, effective immediately through June 30, except June 15, 16, 22, and 23.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900G Freshwater exceptions to statewide rules—2012 North of Falcon Eastern Washington rivers and Columbia River. (12-73)

**WSR 12-13-012  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-107—Filed June 7, 2012, 4:50 p.m., effective June 9, 2012]

Effective Date of Rule: June 9, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900F; 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: As of June 4, a total of forty-two adult spring chinook have returned to the Klickitat Salmon Hatchery. Klickitat Salmon Hatchery is expected to meet its escapement goal of five hundred fish, which will allow additional recreational fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 7, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900F Exceptions to statewide rules—Klickitat River.** Notwithstanding the provisions of WAC 232-28-619, effective June 9 through July 31, 2012, a person may fish for salmon in waters of the Klickitat River from 400 feet upstream of the #5 fishway to boundary markers below Klickitat Salmon Hatchery. Daily limit 6 salmon, of which no more than 2 may be adult Chinook. Release wild Chinook.

REPEALER

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

WAC 232-28-619000F Exceptions to statewide rules—Klickitat River.

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 232-28-619000F is probably intended to be WAC 232-28-61900F.

**WSR 12-13-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-104—Filed June 8, 2012, 9:14 a.m., effective June 8, 2012, 9:14 a.m.]

Effective Date of Rule: Immediately.

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: These changes are needed to correct errors in the Washington Administrative Code language and implement commission intent. 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 2, Amended 0, Repealed 0.

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

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

Date Adopted: June 8, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900G Freshwater exceptions to statewide rules** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Elk Lake (Clallam County):** Kokanee may be retained.

2. **Sylvia Lake (Grays Harbor County):** May retain two trout over 14 inches in length per day.

3. **Vance Creek Ponds #1 and #2 (Grays Harbor County):** May retain two trout over 14 inches in length per day.

4. **Williams Lake (Lewis County):** The lake was inadvertently spelled wrong and should be "Willame Lake"

NEW SECTION

**WAC 232-28-61900M Freshwater exceptions to statewide rules—2012 Eastern Washington lakes.** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Ahtanum Creek (Yakima County).** It is permissible to fish from a floating device equipped with an internal combustion motor.

2. **Rufus Woods Lake (Douglas/Okanogan counties):** Closed waters from Grand Coulee Dam downstream to SR155 Bridge.

3. **Teanaway River (Kittitas County).** Effective immediately until further notice, anglers must comply with the trout statewide minimum size and daily limit.

4. **Tieton River (Yakima County).** It is permissible to fish from a floating device equipped with an internal combustion motor.

**WSR 12-13-016**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-110—Filed June 8, 2012, 9:32 a.m., effective June 8, 2012, 9:32 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend elk hunting rules described in WAC 232-28-360.

Citation of Existing Rules Affected by this Order:  
Amending WAC 232-28-360.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The special permit hunt dates originally adopted in the WAC would have resulted in overlaps between archers and modern firearm hunters or were outside of the time frame desired by the landowners who provide recreational access to hunters. Corrections to the dates were provided to the public via alternate means (agency web site). These corrections will help to avoid confusion for the more than sixty thousand Washington citizens who take part in the special permit application process.

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 8, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-3600A 2012 Elk special permits.** Notwithstanding the provisions of WAC 232-28-360, effective immediately until further notice:

Under the Quality elk section, the dates for the Green River modern firearm (WF) hunt should be changed from Nov. 12-18 to Oct. 27-Nov. 2.

Under the Quality elk section, the dates for the Toutle modern firearm (WF) hunt should be changed from Sept. 17-30 and Nov. 3-14 to Sept. 24-28 and Nov. 3-14.

Under the Bulls section, the dates for the Margaret modern firearm (WF) hunt with 4 permits should be changed from Sept. 17-30 and Nov. 3-14 to Sept. 24-30 and Nov. 3-14.

**WSR 12-13-017**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-108—Filed June 8, 2012, 9:32 a.m., effective June 8, 2012, 9:32 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 232-28-273 to change the applicant requirements for the Huckleberry Range B moose hunt; and to change the superscript designation from "Huckleberry Range B<sup>c</sup>" (applicants must be eligible to purchase a sixty-five years of age or older permit application) to "Huckleberry Range B<sup>b</sup>" (applicants must possess a disabled hunter permit).

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The department has provided antlerless moose hunting opportunity to seniors as well as to hunters with disabilities. This particular hunt, Huckleberry Range B, has been provided to both groups in the past. There was some confusion by the department this year, and the information published in the hunting pamphlet was different than what was adopted in the WAC. This amendment makes the WAC consistent with the hunting pamphlet and, therefore, consistent with the special permit hunt that hunters

applied for during May 2012. This change preserves the general welfare of the public by aligning the hunt they applied for with the rule.

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

Number of Sections Adopted at 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 8, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-27300D 2012-2014 Moose, bighorn sheep, and mountain goat seasons and permit quotas.** Notwithstanding the provisions of WAC 232-28-273, effective immediately, until further notice:

The applicant requirements for the Huckleberry Range B moose hunt changes from the superscript designation of "Huckleberry Range B<sup>c</sup>" (applicants must be eligible to purchase a 65 years of age or older permit application) to "Huckleberry Range B<sup>b</sup>" (applicants must possess a Disabled Hunter Permit).

**WSR 12-13-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-109—Filed June 8, 2012, 9:33 a.m., effective June 8, 2012, 9:33 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend deer hunting rules described in WAC 232-28-359.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-359.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The special-permit season dates contained in the adopted rule would have resulted in overlaps between muzzleloader hunters and modern firearm hunters. Corrections to these dates were provided to the pub-

lic via alternate means (agency web site). These corrections will help avoid confusion for the more than sixty thousand Washington citizens who take part in the special permit application process and rely on the department to provide orderly hunts.

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 8, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-35900A 2012 Deer special permits.** Notwithstanding the provisions of WAC 232-28-359, effective immediately until further notice:

Under the Youth deer section, for the Skookumchuck modern firearm, Antlerless hunt, the dates should be changed from Oct. 6-31 to Oct. 13-31.

Under the Youth deer section, for the Skookumchuck modern firearm, Any buck hunt, the dates should be changed from Oct. 6-31 to Sept. 29-Oct. 5.

**WSR 12-13-036  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-112—Filed June 12, 2012, 3:00 p.m., effective June 13, 2012, 12:01 a.m.]

Effective Date of Rule: June 13, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100H; 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) opens the general Puget Sound pot fishery season for spot shrimp; (2) closes Shrimp Management Area 2E to nonspot fishing, as the quota will be reached; and (3) opens the 1B-21A beam trawl area on July 1. 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 12, 2012.

Philip Anderson  
Director

#### NEW SECTION

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

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

ii) All waters of Catch Areas 23A-S and 23D are closed to the harvest of spot shrimp.

iii) All waters of SMA 2E are closed to the harvest of all shrimp species other than spot shrimp.

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

(c) 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.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure.

Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

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

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

(c) Effective 6:00 a.m. July 1, 2012, that portion of Catch Area 21A within SMA 1B is open.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 13, 2012:

WAC 220-52-05100H Puget Sound shrimp beam trawl fishery—Season. (12-102)

#### **WSR 12-13-041 EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 13, 2012, 12:59 p.m., effective June 13, 2012, 12:59 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is extending emergency rules (previously filed as WSR 12-05-089) for sections of chapter 388-76 WAC to comply with state laws: Initiative Measure 1163 and ESHB 1277. Initiative 1163 requires national fingerprint background checks for long-term care workers hired after January 7, 2012. It is estimated that it may be as long as three weeks and possibly longer before national fingerprint background check results are received. RCW 43.43.837(6) gives the department authority to adopt rules authorizing provisional hiring. Therefore, the department needs to extend emergency rules to allow adult family homes to hire long-term care workers provisionally, pending the results of the fingerprint based background check and following a name and date of birth background check result that shows no disqualifying crimes or findings. ESHB 1277 was passed during the 2011 legislative session and subsequently codified in chapter 70.128 RCW. RCW 70.128.130(16) includes language that requires a qualified caregiver be on-site. Current WAC 388-76-10200 allows for certain residents to be in the home when a qualified caregiver is not present and thus conflicts with the new law. The department has taken these steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 12-05-088 on February 17, 2012. The department has shared drafts of the proposed rules with stakeholders. The department has

filed a proposed rule notice (CR-102), WSR 12-09-071 on April 17, 2012, with a public hearing date of June 5, 2012. However, the department needs to file an emergency extension since the first emergency rules will expire before the permanent rules become effective. WAC 388-76-10166, 388-76-10176, and 388-76-10181 are added as new sections.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10162; and amending WAC 388-76-10160, 388-76-10161, 388-76-10163, 388-76-10164, 388-76-10165, 388-76-10175, 388-76-10180, and 388-76-10200.

Statutory Authority for Adoption: RCW 70.128.040.

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: Extension of these emergency rules is necessary because the first emergency rules will expire before the permanent rules become effective. The rules are necessary for the following reasons: Adult family homes often experience a significant amount of staff turnover. If a new adult family home employee is prevented from having unsupervised access to residents for several weeks, adult family homes may experience staffing shortages and the residents may suffer from a lack of caregivers. Without adequate staffing, the health and safety of residents could be jeopardized. In addition, emergency rules need to be extended to remove the conflicting language from WAC on the qualified caregiver on-site issue.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 8, Repealed 1.

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 3, Amended 8, Repealed 1.

Date Adopted: June 7, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10160 Background checks—General.** Background checks conducted ((by)) through the department and required in this chapter include but are not limited to:

(1) A Washington state name and date of birth background check(~~s including:~~

~~(a) Department and department of health findings; and~~

~~(b) Criminal background check information from the Washington state patrol and the Washington state courts.); and~~

(2) After January 1, 2012, a national fingerprint(~~-based~~) background check in accordance with RCW ((74.39A.055)) 74.39A.056.

(3) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

(4) In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and RCW ((74.39A.050(8))) 74.39A.051(8).

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10161 Background checks—**~~(Washington state—)~~ **Who is required to have.** (1) An adult family home applicant and anyone affiliated with an applicant must have ~~(a Washington state)~~ the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) If applying after January 1, 2012, a national fingerprint background check.

(2) The adult family home must ensure ~~((the following individuals))~~ that all caregivers, entity representatives, and resident managers who are employed directly or by contract after January 1, 2012, have ((Washington state)) the following background checks:

~~(a) ((Caregivers, including volunteers and students who may have unsupervised access to residents))~~ A Washington state name and date of birth background check; and

~~(b) ((Entity representatives;~~

~~(c) Resident managers; and~~

~~(d) All household members over the age of eleven who may have unsupervised access to residents))~~ A national fingerprint background check.

(3) All household members over the age of eleven, volunteers, and students who may have unsupervised access to residents must have a Washington state name and date of birth background check, but are not required to have a national fingerprint background check.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10163 Background checks—Process.** (1) Before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

~~((+))~~ (a) Require the person to complete a DSHS background authorization form; and

~~((2))~~ (b) Send the completed form to the department's background check central unit (BCCU), including any addi-

tional documentation and information requested by the department.

(2) After receiving the results of the Washington state name and date of birth background check the adult family home must:

(a) Not employ, directly or by contract, a resident manager, entity representative or caregiver convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180;

(b) Not allow a household member over the age of eleven, volunteer or student to have unsupervised access to residents if they have been convicted of a disqualifying crime or disqualifying finding under WAC 388-76-10180;

(c) Require individuals specified in WAC 388-76-10161(2) who are hired after January 1, 2012 and are not disqualified by the Washington state name and date of birth background check, to complete a national fingerprint background check and follow department procedures.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10164 Background checks—Results.** ~~((1) The adult family home must not allow persons listed in WAC 388-76-10161(2) to have unsupervised access to residents until the adult family home receives background check results from the department verifying that the person does not have convictions, or findings described in WAC 388-76-10180.~~

~~(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.~~

~~(3))~~ After receiving the results of the background checks, the adult family home must:

~~((a))~~ (1) Inform the person of the results of the background checks;

~~((b))~~ (2) Inform the person that they may request a copy of the results of the background checks. If requested, a copy of the background checks results must be provided within ten days of the request; and

~~((c))~~ (3) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10165 Background checks—Washington state name and date of birth background check—Valid for two years.** A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The adult family home must ensure:

(1) A new DSHS background authorization form is submitted to the BCCU every two years for all individuals listed in WAC 388-76-10161;

(2) There is a valid Washington state background check for all individuals listed in WAC 388-76-10161.

NEW SECTION**WAC 388-76-10166 Background checks—Household members and unpaid staff—Unsupervised access.**

(1) The adult family home must not allow individuals specified in WAC 388-76-10161(3) to have unsupervised access to residents until the home receives results of the Washington state name and date of birth background check from the department verifying that the person does not have convictions or findings described in WAC 388-76-10180.

(2) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must determine whether or not the person has the character, competence and suitability to have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.** An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

(1) Requests the Washington state name and date of birth background check no later than one business day after conditional employment;

(2) Requires the individual to sign a disclosure statement and the individual denies having been convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180;

(3) Does not allow the individual to have unsupervised access to any resident;

(4) Ensures direct supervision, ~~((of the individual,))~~ as defined in WAC 388-76-10000, of the individual; and

(5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112 WAC.

NEW SECTION

**WAC 388-76-10176 Background checks—Employment—Provisional hire—Pending results of national fingerprint background checks.** The adult family home may provisionally employ individuals hired after January 1, 2012 and listed in WAC 388-76-10161(2) for one hundred twenty-days and allow those individuals to have unsupervised access to residents when:

(1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10180 Background checks—Employment—Disqualifying information.** ~~((Unless hired condi-~~

~~tionally as specified in))~~ Except as provided in WAC 388-76-10175 and 388-76-10176, the adult family home must not ~~((use or))~~ employ anyone, directly or by contract, who is listed in WAC 388-76-10161(2) if the individual has~~((:~~

~~((+))~~ any of the convictions, history, or findings, described below:

~~((+))~~ (1) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

~~((+))~~ (2) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f), or (g) below;

~~((+))~~ (3) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

~~((+))~~ (4) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~((+))~~ (5) Has been convicted of:

~~((+))~~ (a) Violation of the Imitation Controlled Substances Act (VICSA);

~~((+))~~ (b) Violation of the Uniform Controlled Substances Act (VUCSA);

~~((+))~~ (c) Violation of the Uniform Legend Drug Act (VULDA); or

~~((+))~~ (d) Violation of the Uniform Precursor Drug Act (VUPDA).

~~((+))~~ (6) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

~~((+))~~ (7) Has been convicted of criminal mistreatment;

~~((+))~~ (8) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26, RCW, and vulnerable adult protective proceedings under chapter 74.34 RCW;

~~((+))~~ (9) Has a finding of abuse or neglect of a child that is:

~~((+))~~ (a) Listed on the department's background check central unit (BCCU) report; or

~~((+))~~ (b) Disclosed by the individual, except for findings made before December, 1998.

~~((+))~~ (10) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

~~((+))~~ (a) Listed on any registry, including the department's registry;

~~((+))~~ (b) Listed on the department's background check central unit (BCCU) report; or

~~((+))~~ (c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

~~((2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.))~~

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

#### NEW SECTION

**WAC 388-76-10181 Background checks—Employment—Nondisqualifying information.** (1) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

**WAC 388-76-10200 Adult family home—Staff—Availability—Contact information.** In addition to other licensing requirements for staff availability, the adult family home must:

(1) Ensure at least one qualified caregiver is present in the home whenever one or more residents are present in the home ~~((, unless the resident has been assessed as being safe when left unattended for a specific period of time, and that information is included in the negotiated care plan)).~~ For purpose of this subsection, a qualified caregiver means someone who has completed orientation and basic training;

(2) Designate an experienced, staff member who is capable of responding on behalf of the adult family home by phone or pager at all times.

(3) Give residents the telephone or pager number for the contact required in subsection (2) of this section;

(4) Ensure the provider, entity representative or resident manager is readily available to:

- (a) Each resident;
- (b) Residents' representatives;
- (c) Caregivers; and
- (d) Authorized state staff.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10162	Background check—National fingerprint checks—Who is required to have.
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**WSR 12-13-042  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-111—Filed June 13, 2012, 2:39 p.m., effective June 13, 2012, 2:39 p.m.]

Effective Date of Rule: Immediately.

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: These changes are needed to correct errors in the Washington Administrative Code language and implement commission intent. 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 13, 2012.

James B. Scott, Jr.  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900D Freshwater exceptions to statewide rules—Chelan Lake** Notwithstanding the provisions of WAC 232-28-619 and WAC 220-55-070, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Chelan Lake (Chelan County):**

a. **South of a line between Purple Point and Painted Rocks to Chelan Dam:** Salmon season is year-round with a minimum size of 15 inches and daily limit of one fish. No catch record card required for salmon.

b. **North of a line between Purple Point and Painted Rocks:** No catch record card required for salmon.

**WSR 12-13-051**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-113—Filed June 15, 2012, 8:46 a.m., effective June 18, 2012,  
6:00 a.m.]

Effective Date of Rule: June 18, 2012, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets two weeks of commercial gillnet fishing during the summer season. Based on the pre-season forecast and the *U.S. v. Oregon* Management Agreement, treaty fisheries are allocated 27,700 adult upriver summer chinook and 32,000 sockeye. The rules continue to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries in Zone 6 and downstream of Bonneville Dam consistent with tribal memorandum of understandings/memorandum of agreements. The rules continue to allow the sale of fish caught in Yakama Nation tributary fisheries, consistent with Yakama Nation regulations. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 14 and June 13, 2012. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.),

Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: June 15, 2012.

James B. Scott, Jr.  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 220-32-05100S Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and in the Wind River, Klickitat River, Icicle River and Drano Lake and specific areas of SMCRA 1E, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

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

a. Season: 6:00 a.m. June 18 through 6:00 p.m. June 21, 2012

6:00 a.m. June 25 through 6:00 p.m. June 28, 2012

b. Gear: Gillnets.

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

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

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

a. Season: Open until further notice.

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

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

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

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

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

b. Season: Open until further notice.

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

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Open Area: Columbia River Tributaries upstream of Bonneville Dam

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

b. Area: Drano Lake, Wind River, Klickitat River, and Icicle Creek.

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

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch.

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 18, 2012:

WAC 220-32-05100R	Columbia River salmon seasons above Bonneville Dam. (12-82)
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**WSR 12-13-052  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-114—Filed June 15, 2012, 8:48 a.m., effective June 16, 2012]

Effective Date of Rule: June 16, 2012.

**Purpose:** The purpose of this rule making is to allow nontreaty commercial 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 220-33-01000N; and amending WAC 220-33-010.

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

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

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

**Reasons for this Finding:** Sets the first 2012 summer season non-Indian mainstem commercial salmon season. Based on preseason forecasts and management guidelines, a total of four thousand six hundred fish have been allocated to mainstem commercial non-Indian fisheries. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Select area commercial seasons remain in place. Conforms Washington state rules with Oregon state rules. Regulation is consistent with



compact action of June 13, 2012. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: June 15, 2012.

James B. Scott, Jr.  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-33-01000N Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful

for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

#### **1. Mainstem Columbia River**

a) **Dates:** 9:00 p.m. Sunday, June 17, to 5:00 a.m. Monday, June 18, 2012.

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

c) **Gear:** Drift gillnets only. 8-inch minimum mesh size. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d) **Allowable Sales:** Chinook, sockeye, shad and white sturgeon. A maximum of 5 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **Sanctuaries:** Grays River, Elochoman-A, Cowlitz River, Kalama-A, Lewis-A, Sandy, and Washougal rivers.

f) **Miscellaneous Regulations:** 24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 a.m. June 18, 2012:

WAC 220-33-01000N Columbia River seasons below Bonneville.

#### **WSR 12-13-057 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 12-115—Filed June 15, 2012, 10:37 a.m., effective June 26, 2012, 12:01 a.m.]

Effective Date of Rule: June 26, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000M; and amending WAC 220-52-030.

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: Based on historical catches and on-site inspection, there should be adequate clams to support an extension for commercial razor clams. Biotxin levels currently fall below the regulatory threshold. 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 15, 2012.

James B. Scott, Jr.  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-03000M Commercial razor clams.** Notwithstanding the provisions of WAC 220-52-030, effective June 26, 2012, through 11:59 p.m. July 8, 2012, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 1 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point, defined by a line of boundary markers consisting of four fluorescent orange posts with the eastern-most post located at N 46° 39.597; W 124° 03.466, and the western-most post located at N 46° 39.548; W 124° 03.733.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 9, 2012:

WAC 220-52-03000M Commercial razor clams.

#### **WSR 12-13-060**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 15, 2012, 1:33 p.m., effective June 16, 2012]

Effective Date of Rule: June 16, 2012.

Purpose: The text of the rules as WSR 12-05-074 has not changed. This filing extends the current language as the department is proceeding with filing the permanent rule for WAC 388-106-0210 as a public hearing was held on May 8, 2012. On July 1, 2012, the department anticipates filing an emergency rule for changes to WAC 388-106-0010.

This CR-103E supersedes WSR 12-05-074.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0020 and 388-106-0210.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: See Purpose 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 0, Repealed 0.

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

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

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

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

Date Adopted: June 13, 2012.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-14 issue of the Register.

#### **WSR 12-13-061**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 15, 2012, 1:46 p.m., effective June 16, 2012]

Effective Date of Rule: June 16, 2012.

Purpose: The text of the rules as WSR 12-05-075 has not changed. This filing extends the current language as the department is proceeding with filing the permanent rule for WAC 388-106-0075, 388-106-0126 and 388-106-0213. On July 1, 2012, the department anticipates filing an emergency rule regarding the add-on benefit under WAC 388-106-0130.

This CR-103E supersedes WSR 12-05-075.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-106-0126 and 388-106-0213; and amending WAC 388-106-0075 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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 aging and disability services administration (ADSA) previously amended WAC 388-106-0130 by emergency rule to revise the assessment process for allocating personal care hours to children with disabilities as a result of the Washington State Supreme Court ruling in *Samantha A. v. DSHS*, and to eliminate an add-on benefit for remote shopping and off-site laundry as a result of rulings in both *Samantha A.* and *M.T.E. v. Dreyfus*. Those cases required the department to immediately revoke the former children's assessment rule and inform all children who receive personal care services that they could be awarded with full base hours, pending an individualized assessment. This required the department to adopt emergency rules for individualized children's assessments, set forth definitions for the types of informal supports which may result in an adjustment to base hours upon individualized assessments to provide clarity in department notices, and eliminate the add-on benefits for remote shopping and off-site laundry to offset increased personal care expenditures resulting from awarding full base hours to children pending individualized assessments under the new children's assessment rule, which the department projected would exceed its biennial budget. The department is not authorized to exceed its budget, under RCW 74.09.520(3).

The cost savings eliminating the add-on benefit were originally imposed by emergency rule, the department commenced the permanent rule-making process, and the department issued emergency rules extending the cost-savings pending the permanent rule making, as authorized by RCW 34.05.350 (1)(c) and (2) (WSR 12-04-053, 12-01-118, 12-05-075). At this time, the emergency rule eliminating the add-on benefit needs to be extended, because continued cost savings are still required to ensure that the department does not exceed its budget. The department has projected, however, that the cost-savings imposed by the emergency elimination of the add-on benefit necessary to comply with the orders in *Samantha A.* and *M.T.E.*, will only be required to be extended through June 30, 2012. Thereafter, the department projects that it will no longer exceed its biennial budget appropriation if an add-on benefit for remote shopping and off-site laundry is restored on July 1, 2012. Accordingly, the emergency rule eliminating the add-on benefit is extended through June 30, 2012, to complete the cost-savings required to comply with *Samantha A.* and *M.T.E.*, and on July 1, 2012, the department anticipates filing an emergency rule to restore an add-on benefit for remote shopping and off-site laundry and begin per-

manent rule making for such rule. Extension of the emergency elimination of the add-on benefit is authorized under these circumstances under RCW 34.05.350 (1)(c) (emergency rule making authorized to comply with budget provisions) and RCW 34.05.350(2) (authorizing extension of an emergency rule due to a change of conditions).

This filing supersedes the CR-103E filed as WSR 12-05-075 on February 16, 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 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 13, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0075 How is my need for personal care services assessed in CARE?** (~~To assess your need for personal care services,~~) The department gathers information from you, your caregivers, family members(=) and other sources to assess your abilities to perform personal care tasks. The department will also consider developmental milestones for children as defined in WAC 388-106-0130 when individually assessing your abilities and needs for assistance. The department will assess your ability to perform:

(1) Activities of daily living (ADL) using self performance(=) support provided, status and assistance available, as defined in WAC 388-106-0010. Also, the department determines your need for "assistance with body care" and "assistance with medication management," as defined in WAC 388-106-0010; and

(2) Instrumental activities of daily living (IADL) using self performance(=) difficulty, status and assistance available, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 11-11-024, filed 5/10/11, effective 6/10/11)

**WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?** (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will (~~deduct from the~~) adjust base hours to account for informal supports, shared benefit, and

age appropriate functioning (as those terms are defined in WAC 388-106-0010), ~~((or))~~ and other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for informal supports ~~((by determining))~~, shared benefit, and age appropriate functioning; determines the amount of assistance

available ~~((to meet your needs))~~; assigns ~~((#))~~ a numeric ~~((percentage))~~ value to those assessed indicators; and ~~((reduces))~~ adjusts the base hours assigned to the classification group by the numeric ~~((percentage))~~ value. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

<b>Meds</b>	<b>Self ((Performance)) Administration</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
((Self administration of medications)) Medication Management	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Age appropriate functioning	N/A	0
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			
<b>Unscheduled ADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Age appropriate functioning	N/A	0
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			
<b>Scheduled ADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Age appropriate functioning	N/A	0
		Partially met	<1/4 time	.75
1/4 to 1/2 time	.55			
1/2 to 3/4 time	.35			
>3/4 time	.15			
<b>IADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Age appropriate functioning	N/A	0

IADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
		Partially met or Shared benefit	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
			>3/4 time	.05
IADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Age appropriate functioning	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
		>3/4 time	.3	

Key:  
 > means greater than  
 < means less than

(b) To determine the amount ~~((of reduction))~~ adjusted for informal support, shared benefit and/or age appropriate functioning, the ~~((value percentages))~~ numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours ~~((reduced for informal supports))~~.

~~(3) ((Also, the department will adjust in-home base hours when:~~

~~(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status~~

~~under subsection (2)(a) of this section must be met or partially met for the following IADLs:~~

- ~~(i) Meal preparation;~~
- ~~(ii) Housekeeping;~~
- ~~(iii) Shopping; and~~
- ~~(iv) Wood supply.~~

~~(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.~~

~~(4)) Effective February 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in ((subsections (2) and (3))) subsection (2), the department may add on hours ((based on your living environment)) only if you use wood as your sole source of heat:~~

Condition	Status	Assistance Available	Add On Hours
<del>((Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.</del>	N/A	N/A	8
<del>Client is &gt;45 minutes from essential services (which means he/she lives more than 45 minutes one way from a full-service market).</del>	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
	>3/4 time	2))	

Condition	Status	Assistance Available	Add On Hours	
Wood supply used as sole source of heat.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	<u>Age appropriate</u>	<u>N/A</u>	<u>0</u>	
	<u>Partially met or Shared benefit</u>	<1/4 time		8
		between 1/4 to 1/2 time		6
between 1/2 to 3/4 time			4	
	>3/4 time		2	

~~((5))~~ (4) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.

~~((6))~~ (5) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to ~~((meet))~~ address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

~~((7))~~ (6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

- (a) Personal care services from a home care agency provider and/or an individual provider.
- (b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).
- (c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).
- (d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department will complete a CARE assessment and use the developmental milestones table below when assessing your ability to perform personal care tasks.

(b) Your status will be coded as age appropriate when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table, unless the circumstances in subpart (c) apply.

(c) The department may code status as other than age appropriate for an ADL or IADL, despite your self performance falling within the expected developmental milestones for your age, if the department determines during your assessment that your level of functioning is not primarily due to your age.

<u>Developmental Milestones for Activities of Daily Living (ADLS)</u>		
<u>ADL</u>	<u>Self-Performance</u>	<u>Assessed Age Range</u>
<u>Medication Management</u>	<u>Independent</u> <u>Self-Directed</u> <u>Assistance Required</u> <u>Must Be Administered</u>	<u>Birth through the 17th year</u>
<u>Locomotion in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Locomotion Outside Room</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 5th year</u>
	<u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Walk in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>

<b><u>Developmental Milestones for Activities of Daily Living (ADLS)</u></b>		
<b><u>ADL</u></b>	<b><u>Self-Performance</u></b>	<b><u>Assessed Age Range</u></b>
<u>Bed Mobility</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 2nd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Transfers</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 2nd year</u>
<u>Toilet Use</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 3rd year</u>
<u>Eating</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 2nd year</u>
<u>Bathing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Physical help/Transfer only</u> <u>Physical help/part of bathing</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>
<u>Dressing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited</u> <u>Extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>
<u>Personal Hygiene</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited or extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>

<b><u>Developmental Milestones for Instrumental Activities of Daily Living</u></b>		
<b><u>IADL</u></b>	<b><u>Self Performance</u></b>	<b><u>Assessed Age</u></b>
<u>Telephone</u> <u>Transportation</u> <u>Essential</u> <u>Shopping</u> <u>Wood Supply</u> <u>Housework</u> <u>Finances</u> <u>Meal Preparation</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 17th year</u>

<b>Additional Developmental Milestones coding</b>		
<b>CARE panel</b>	<b>Selection</b>	<b>Assessed Age</b>
Speech/Hearing: Comprehension	By others client is=Age Appropriate	Birth through the 2nd year
Psych Social: MMSE	Can MMSE be administereed?=No	Birth through the 17th year
Psych Social: Memory/Short Term	Recent memory=Age appropriate	Birth through the 11th year
Psych Social: Memory/Long Term	Long Term memory=Age appropriate	Birth through the 11th year
Psych Social: Depression	Interview=unable to obtain	Birth through the 11th year
Psych Social: Decision Making	Rate how client makes decision=Age appropriate	Birth through the 11th year
Bladder/Bowel:	Bladder/Bowel Control: Continent Usually Continent Occasionally Incontinent Frequently Incontinent	Birth through the 11th year
Bladder/Bowel:	Bladder/Bowel Control: Incontinent all or most of the time	Birth through the 5th year
Bladder/Bowel:	Appliance and programs=Potty Training	Birth through the 3rd year

(8) If you are a child applying for personal care services and your self performance is not age appropriate as determined under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL.

(a) When you are living with your legally responsible parent(s), the department will take into account their legal obligation to care for you when determining the availability of informal supports. Legally responsible parents include natural parents, step-parents, and adoptive parents. Legally responsible parents generally do not include other relative caregivers or foster parents. A legally responsible parent will not be considered unavailable to meet your needs due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) The department will presume that you have informal supports available to assist you with your ADLs and IADLs over three-fourths but not all of the time. The department will code your informal support as greater or less than the presumed amount if your assessment shows that your need for assistance with personal care tasks is fully met by informal supports or shared benefit, or if you provide specific information during your assessment to indicate why you do not have support available three-fourths or more of the time to assist you with a particular ADL or IADL.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

- WAC 388-106-0126 If I am under age twenty-one, how does CARE use criteria to place me in a classification group for in-home care?
- WAC 388-106-0213 How are my needs assessed if I am a child applying for MPC services?

**WSR 12-13-066  
EMERGENCY RULES  
DEPARTMENT OF REVENUE**

[Filed June 18, 2012, 10:50 a.m., effective June 18, 2012, 10:50 a.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply: WAC 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally, 458-20-19403 (Rule 19403) Single factor receipts apportionment—Royalties, and 458-20-19404 (Rule 19404) Financial institutions—Income apportionment.

There are no changes from the previous emergency rules filed January 13, 2012, under WSR 12-03-086.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).



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

Reasons for this Finding: An emergency adoption of these new rules is necessary because permanent rules cannot be adopted at this time.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 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 3, 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 18, 2012.

Alan R. Lynn  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-14 issue of the Register.

### WSR 12-13-069

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

(Residential Care Services)

[Filed June 18, 2012, 1:21 p.m., effective June 18, 2012, 1:21 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is extending emergency rules (previously filed as WSR 12-05-115) for sections of chapter 388-78A WAC to comply with Initiative Measure 1163. Initiative 1163 requires national fingerprint background checks for long-term care workers hired after January 7, 2012. It is estimated that it may be as long as three weeks and possibly longer before national fingerprint background check results are received. RCW 43.43.837(6) gives the department authority to adopt rules authorizing provisional hiring. Therefore, the department needs to extend emergency rules to allow boarding homes/assisted living facilities to hire long-term care workers provisionally, pending the results of the fingerprint based background check and following a name and date of birth background check result that shows no disqualifying crimes or findings. The department has taken these steps to adopt the emergency rules as permanent rules: The department has filed an initial public notice (CR-101), WSR 12-05-114 on February 22, 2012. The department has

shared drafts of the proposed rules with stakeholders. However, the department needs to file an emergency extension since the first emergency rules will expire before the permanent rules become effective. WAC 388-78A-24681 and 388-78A-24701 are new sections.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-2463; and amending WAC 388-78A-2461, 388-78A-2462, 388-78A-2464, 388-78A-2465, 388-78A-2466, 388-78A-2468, and 388-78A-2469.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that 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: Extension of these emergency rules is necessary because the first emergency rules will expire before the permanent rules become effective. The rules are necessary for the following reasons: Boarding homes often experience a significant amount of staff turnover. If a new boarding home employee is prevented from having unsupervised access to resident[s] for several weeks, boarding homes may experience staffing shortages and the residents may suffer from a lack of caregivers. Without adequate staffing, the health and safety of resident[s] could be jeopardized.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 7, Repealed 1.

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 2, Amended 7, Repealed 1.

Date Adopted: June 13, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2461 Background checks—General.**  
**(1)** Background checks conducted by the department and required in this chapter include ~~((but are not limited to))~~:  
~~((+))~~ (a) Washington state name and date of birth background checks ~~((including~~:  
~~(a) Department and department of health findings~~); and

~~(b) ((Criminal background check information from the Washington state patrol and the Washington state courts;~~

~~(2))~~ After January 1, 2012, a national fingerprint~~((based))~~ background check in accordance with RCW ~~((74.39A.055))~~ 74.39A.056.

~~((3))~~ (2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

~~((4))~~ (3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW ~~((74.39A.050(8)))~~ 74.39A.051 (8).

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2462 Background checks—**~~((Washington state))~~ **Who is required to have.** (1) Applicants for a boarding home license, as defined in WAC 388-78A-2740, ~~((are required to have a Washington state))~~ must have the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(2) For purposes of this section, the administrator is presumed to provide direct care.

(3) For purposes of this section the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009 and chapter 388-112 WAC.

(4) The boarding home must ensure ~~((the following have Washington state))~~ that the administrator and all caregivers employed directly or by contract after January 1, 2012 have the following background checks:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(5) The boarding home must ensure that the following individuals have a Washington state name and date of birth background check. They are not required to have a national fingerprint background check:

(a) ~~((Caregivers, including))~~ Volunteers who are not residents, and students who may have unsupervised access to residents;

(b) ~~((Administrators;~~

(e) Licensee;

(d)) Staff persons other than caregivers and administrators;

~~((e))~~ (c) Managers unless they provide direct care to residents; and

~~((f))~~ (d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2464 Background checks—Process.**

(1) Before the boarding home employs, directly or by contract, an administrator, staff person or caregiver, or accepts as a caregiver, any volunteer who is not a resident, or student, the home must:

(a) Require the person to complete a DSHS background authorization form; and

(b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

(2) ~~((For purposes of this section, the administrator is presumed to provide direct care))~~ After receiving the results of the Washington state name and date of birth background check the boarding home must:

(a) Not allow individuals to have unsupervised access to residents if they have been convicted of a disqualifying crime or finding under WAC 388-78A-2470.

(b) Require individuals listed in WAC 388-78A-2462(2), who are hired after January 1, 2012 and are not disqualified by the Washington state name and date of birth background check, to complete a national fingerprint background check and follow department procedures.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2465 Background check—Results.**

~~((1) The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.~~

~~(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.~~

~~(3))~~ After receiving the results of the background checks, the boarding home must:

~~((a))~~ (1) Inform the person of the results of the background checks;

~~((b))~~ (2) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

~~((c))~~ (3) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2466 Background check—Washington state name and date of birth background check—Valid for two years.** A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The boarding home must ensure:

(1) A new DSHS background authorization form is submitted to BCCU every two years for individuals listed in WAC 388-78A-2462; and

(2) There is a valid Washington state name and date of birth background check for all individuals listed in WAC 388-78A-2462.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.** The boarding home may conditionally hire an individual described in WAC 388-78A-2462, directly or by contract, pending the result of ((~~the~~)) the Washington state name and date of birth background check, provided that the boarding home:

(1) Submits the background authorization form for the individual to the department no later than one business day after the individual starts working;

(2) Requires the individual to sign a disclosure statement, and the individual denies having been convicted of a disqualifying crime or have a disqualifying finding under WAC 388-78A-2470;

(3) Has received three positive references for the individual;

(4) Does not allow the individual to have unsupervised access to any resident;

(5) Ensures direct supervision(~~(, of the individual,))~~ as defined in RCW 18.20.270, of the individual; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

NEW SECTION

**WAC 388-78A-24681 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check.** The boarding home may provisionally employ caregivers and an administrator hired after January 1, 2012 as specified in WAC 388-78A-2462(2) for one hundred and twenty-days and allow those individuals to have unsupervised access to residents when:

(1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2469 Background check—Disclosure statement.** (1) Prior to first starting his or her duties, the boarding home must require each individual described in WAC 388-78A-2462 to make disclosures(~~(s))~~ of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the individual under penalty of perjury.

(2) The department may require the boarding home or any individual described in WAC 388-78A-2462 to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

NEW SECTION

**WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information.** (1) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this chapter should be interpreted as requiring the employment of any person against the better judgment of the boarding home.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-78A-2463	Background check—National fingerprint checks—Who is required to have.
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**WSR 12-13-090**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 19, 2012, 2:58 p.m., effective June 19, 2012, 2:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the new language in chapters 388-71 and 388-112 WAC is to implement and clarify the training requirements and the criminal history background check requirements as directed in chapter 74.39A RCW and to revise the implementation effective dates as directed by Initiative 1163 and subsequently ESHB 2314. Chapter 74.39A WAC requires training for long-term care workers which includes seventy-five hours of entry-level training and also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually. Initiative 1163, enacted by the people in November 2011, requires implementation of these rules effective beginning January 7, 2012 (unless otherwise specified). Emergency rules were filed to implement the effective dates as WSR 12-05-100. This emergency rule filing supersedes the emergency rule filed as WSR 12-05-100 in order to (1) add requirements for the filing of administrative hearings that are available under I-1163; and (2) change dates in the original filing that are not consistent with I-1163 and add other items reflected in ESHB 2314. A CR-101 has been filed successively to begin the permanent rule process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-05665, 388-71-05670, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-71-05695, 388-71-05700, 388-71-05705, 388-71-05710,

388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-112-0025, 388-112-0030, 388-112-0050, 388-112-0060, 388-112-0065, 388-112-0080, 388-112-0085, 388-112-0090, 388-112-0095, 388-112-0105, 388-112-0230, 388-112-0245, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630 and 388-112-0375; and amending WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0560, 388-112-0001, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0055, 388-112-0070, 388-112-0075, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0125, 388-112-0130, 388-112-0135, 388-112-0140, 388-112-0145, 388-112-0150, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0195, 388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0235, 388-112-0240, 388-112-0255, 388-112-0260, 388-112-0270, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, and 388-112-0410.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520; Washington state 2009-2011 budget (ESHB 2314).

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: 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 86, Amended 63, Repealed 77.

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 86, Amended 63, Repealed 77.

Date Adopted: June 14, 2012.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-15 issue of the Register.

**WSR 12-13-091  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-116—Filed June 19, 2012, 3:23 p.m., effective June 25, 2012]

Effective Date of Rule: June 25, 2012.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Daily landing limits for sea cucumbers have been requested by the industry in an effort to conserve harvest quota and maximize market opportunities. Prohibition of all diving from licensed sea cucumber harvest vessels within two days of scheduled openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 19, 2012.

Philip Anderson  
Director

**NEW SECTION**

**WAC 220-52-07100R Sea cucumbers.** Notwithstanding the provisions of WAC 220-52-071, effective June 25, 2012, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes, except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2, 3 and 5 on Monday and Tuesday of each week.

(2) The maximum cumulative landing of sea cucumbers for each two-day fishery opening period is 1,600 pounds per valid designated sea urchin harvest license. It is permissible for all or any fraction of the maximum 1,600 pound total to be harvested during any legal harvest date so long as the cumulative total for the two-day opening does not exceed the maximum.

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

**WSR 12-13-092**

**EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-117—Filed June 19, 2012, 3:25 p.m., effective June 19, 2012, 3:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300Z.

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 2011-2012 state sea urchin harvest quota share amounts have been taken for the majority of the legal harvest areas. Closure of areas with remaining harvest quota shares prevents potential wastage of harvested sea urchin product, which is highly perishable, during the periods of warm weather experienced during summer months. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 19, 2012.

Philip Anderson  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300Z Sea urchins. (12-26)

**WSR 12-13-093  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-118—Filed June 19, 2012, 3:47 p.m., effective June 21, 2012]

Effective Date of Rule: June 21, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900P; 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 provide angling opportunity for anglers fourteen years of age and younger during the "Hooked on Kids Fishing Derby." This section of the Columbia River is currently open to fishing for all licensed adult and juvenile anglers. This temporary regulation will protect the trout stocked previously for the kid's derby and only allow juvenile anglers to fish a small inlet of the Columbia River during the derby. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 19, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900P Exceptions to statewide rules—Bridgeport Marina Park Lagoon.** Notwithstanding the provisions of WAC 232-28-619, effective June 21 through June 23, 2012, it is unlawful to fish in waters of Bridgeport Marina Park Lagoon, which is that portion of the inlet inside and east of a barrier net excluding the inlet from the main portion of the Columbia River. Except open June 23, 2012, to juvenile anglers who are registered for the "Hooked on Kids Fishing Derby". Each juvenile angler registered for the derby will be limited to two Rainbow trout. For all other game fish, state-wide minimum size and daily limits will apply.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 24, 2012:

WAC 232-28-61900P	Exceptions to statewide rules—Bridgeport Marina Park Lagoon.
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