

WSR 17-14-094
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Behavioral Health Administration)

[Filed June 30, 2017, 3:39 p.m., effective July 1, 2017]

Effective Date of Rule: July 1, 2017.

Purpose: The department is amending rules about grievances, appeals, and hearings in chapter 388-877 WAC to align with the Centers for Medicare and Medicaid Services' amended federal rules in 42 C.F.R. 438 Subpart F that govern the grievance and appeals system for medicaid managed care. States must comply with these federal rule amendments by July 1, 2017. The new definitions, time frames, and alignment of certain processes for appeals and grievances will provide individuals with a more streamlined and manageable grievance and appeals process, and will allow behavioral health agencies and behavioral health organizations to further align rules applicable to private health insurance and group health plans that apply across the market. The department is limiting amendments to bringing the rules into compliance with federal rules and making necessary edits to change names and terms and clarify language without changing the rule's effect.

Citation of Existing Rules Affected by this Order: Amending WAC 388-877-0654, 388-877-0655, 388-877-0660, 388-877-0665, 388-877-0670, 388-877-0675, and 388-877-0680.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035 (5)(c), 71.24.520, and 71.34.380.

Other Authority: 42 C.F.R. 438 Subpart F, as amended in 81 Fed. Reg. 27498, May 6, 2016.

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: These emergency rules are necessary to comply with amended federal rules in 42 C.F.R. 438 Subpart F governing the grievance and appeals system for medicaid managed care that become effective July 1, 2017. *See* 81 Fed. Reg. 27498-99, May 6, 2016. These state rules were presented for public hearing on June 27, 2017, under WSR 17-11-068, and the department is working to address public comments. These emergency rules are the same as the rules proposed under WSR 17-11-068 with one numbering correction and one spelling correction. When the permanent rules become effective they will supersede these emergency 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.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 7, Repealed 0.

Date Adopted: June 30, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0654 How individuals ~~((can))~~ may express concern about their rights, services, or treatment. (1) ~~((An individual applying))~~ Individuals who apply for, are eligible for, or ~~((receiving mental))~~ receive behavioral health services ~~((or substance use disorder services, or both,))~~ authorized by a behavioral health organization (BHO), ~~((the individual's representative, or the individual's legal guardian,))~~ may access the BHO's grievance and appeal system to express concern about their rights, services, or treatment.

(2) The BHO's grievance and appeal system includes:

(a) A grievance process as described in WAC 388-877-0660;

(b) An appeal process as described in WAC 388-877-0670; and

(c) Access to administrative hearings as described in WAC 388-877-0675.

~~((2) Before requesting an administrative hearing, the individual))~~ (3) Individuals must exhaust

~~((a) The grievance process, subject to WAC 388-877-0660; or~~

~~((b)) the appeal process ~~((subject to WAC 388-877-0670))~~ before they have access to an administrative hearing.~~

~~((3))~~ (4) Individuals may also use the free and confidential ombuds services under WAC 388-865-0262 through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and ~~((agency services providers))~~ behavioral health agencies and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

~~((4) See WAC 388-865-0262 for more information on ombuds services through the behavioral health ombuds office.))~~

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0655 Grievance and appeal system and administrative hearings—Definitions. The terms and definitions in this section ~~((and WAC 388-877-0200))~~ apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearing rules. Other definitions that apply to behavioral health services may be found at WAC 388-877-0200.

(1) ("Action" means, in the case of a behavioral health organization (BHO):

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) ~~The reduction, suspension, or termination of a previously authorized service;~~

(c) ~~The denial in whole or in part, of payment for a service;~~

(d) ~~The failure to provide services in a timely manner, as defined by the state; or~~

(e) ~~The failure of a BHO or its contracted behavioral health agency to act within the grievance system timeframes as provided in WAC 388-877-0660 through 388-877-0675.~~

~~(2)) "Administrative hearing" means a proceeding before an administrative law judge ((that gives an individual an opportunity to be heard in disputes about DSHS programs and services)) to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.~~

~~(2) "Adverse benefit determination" means, in the case of medicaid services administered by the BHO, any one or more of the following:~~

~~(a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;~~

~~(b) The reduction, suspension, or termination of a previously authorized service;~~

~~(c) The denial, in whole or in part, of payment for a service;~~

~~(d) The failure to provide services in a timely manner, as defined by the state; or~~

~~(e) The failure of a BHO to act within the grievance and appeal system time frames as provided in WAC 388-877-0660 through 388-877-0670 regarding the standard resolution of grievances and appeals.~~

~~(3) "Appeal" means ((an oral or written request by an individual, or with the individual's written permission, the individual's representative, for the)) a review by a behavioral health organization (BHO) ((to review)) of an ("action-") adverse benefit determination, as defined in this section. ((See also "expedited appeal."))~~

~~(4) ("Appeal process" is one of the processes included in the grievance system that allows an individual to appeal an action made by the behavioral health organization (BHO) and communicated on a "notice of action."~~

~~(5) "Expedited appeal process" allows an individual, in certain circumstances, to file an appeal that will be reviewed by the behavioral health organization (BHO) more quickly than a standard appeal.~~

~~(6)) "Grievance" means an expression of dissatisfaction about any matter other than an ("action-") adverse benefit determination. Grievances may include, but are not limited to, an individual's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a behavioral health provider or employee, and failure to respect the individual's rights regardless of whether a specific action is requested by the individual.~~

~~((7) "Grievance process" is one of the processes included in the grievance system that allows an individual to~~

~~express concern or dissatisfaction about a behavioral health service.~~

~~(8)) (5) "Grievance and appeal system" means the processes ((through)) a ((behavioral health organization (BHO)) in which an individual applying for, eligible for, or receiving behavioral health services may express dissatisfaction about services)) BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system ((must be established by the BHO, must)) and meet the requirements of 42 C.F.R. Sec. 438, Subpart F((, and include:~~

~~(a) A grievance process;~~

~~(b) An appeal process; and~~

~~(c) Access to the department's administrative hearing process)) (2017).~~

~~((9)) (6) "Individual" means a person who applies for, is eligible for, or receives ((behavioral health organization (BHO)) BHO-authorized behavioral health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance and appeal system and the administrative hearing process, when another person is acting on an individual's behalf, the definition of individual also includes any of the following ((if another person is acting on the individual's behalf)):~~

~~(a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;~~

~~(b) The individual's legal guardian; ((or))~~

~~(c) The individual's representative if the individual gives written ((permission)) consent;~~

~~(d) The individual's behavioral health provider if the individual gives written consent, except that the behavioral health provider cannot request continuation of benefits on the individual's behalf.~~

~~((10)) (7) "Notice of ((action)) adverse benefit determination" is a written notice a ((behavioral health organization (BHO)) BHO provides to an individual to communicate an ("action-") adverse benefit determination.~~

~~((11) "Regional support network" or "RSN" no longer exists as of March 31, 2016. See WAC 388-865-0238, "Behavioral health organization."))~~

~~(8) "Notice of determination" means a written notice that must be provided to an individual to communicate denial or limited authorization of a nonmedicaid service offered by the BHO. A notice of determination must contain the following:~~

~~(a) The reason for denial or offering of alternative services;~~

~~(b) A description of alternative services, if available; and~~

~~(c) The right to request an administrative hearing, how to request a hearing, and the timeframes for requesting a hearing as identified in WAC 388-877-0675.~~

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0660 Filing a grievance ((process)). (1) ((The grievance process is used by)) An individual or ((the)) individual's representative may file a grievance to express dissatisfaction in person, orally, or in writing about any mat-

ter other than an (~~"action,"~~) adverse benefit determination, as defined in WAC 388-877-0655, to:

(a) The behavioral health agency providing the behavioral health services; or

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If an individual receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the individual's grievances or expressions of dissatisfaction.

(3) There is no time limit to file a grievance.

(4) The ombuds (~~(serving the behavioral health agency or BHO)~~) may assist the individual in resolving the grievance at the lowest possible level.

~~((4) Grievances are subject to the rules in this section, WAC 388-877-0650, 388-877-0655, and 388-877-0665 through 388-877-0680. An individual may choose to file a grievance with the behavioral health agency that provides the behavioral health services or with the BHO, subject to the following:))~~

~~((a)) (5) Filing a grievance with a behavioral health agency.~~ If ~~((the))~~ an individual first files a grievance with the behavioral health agency and the individual is not satisfied with the agency's written decision on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection ((6)) (7) of this section, the individual may then choose to file the grievance with the BHO. ((If the individual is not satisfied with)) The BHO's written decision on the grievance((, or if the individual does not receive a copy of the decision from the BHO within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it)) is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

~~((b)) (6) Filing a grievance with a BHO.~~ If the individual first files a grievance with the BHO ~~((and not the agency((,))~~ and the individual ~~((either))~~ is not satisfied with the BHO's written decision on the grievance, ~~((or does not receive a copy of the decision within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from a BHO,))~~ the individual cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

~~((5) An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection (6) of this section.))~~

~~((6)) (7) When an individual files a grievance, the behavioral health agency or BHO ((receiving)) that receives the grievance must:~~

(a) Acknowledge the receipt of the grievance in writing within five business days;

(b) Investigate the grievance;

(c) At the individual's request, give the individual reasonable assistance in taking any procedural steps;

(d) Inform the individual about ombuds services and how to access these services;

~~((7)) (8) Apply the rules in subsection ((7)) (8) of this section; and~~

~~((4)) (f) Send the individual who filed the grievance a written notice describing the decision ((within)) no longer than ninety calendar days from the date the behavioral health agency or BHO receives the grievance ((was filed)).~~

~~((7)) (8) The behavioral health agency or BHO ((receiving)) that receives the grievance must ensure all of the following:~~

(a) Other people ~~((, if the individual chooses,))~~ are allowed to participate in the grievance process, if the individual chooses.

(b) ~~((The individual's right to have currently authorized behavioral health services continued pending resolution of the grievance and, if applicable, through subsequent steps of the grievance system.~~

~~((e)) That a grievance is resolved even if the individual is no longer receiving behavioral health services.~~

~~((4)) (c) That the persons who make decisions on a grievance:~~

(i) Were not involved in any previous level of review or decision making nor a subordinate of any person who reviewed or decided on a previous level of the grievance; ~~((and))~~

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if ((the grievance)) deciding a grievance concerning denial of an expedited resolution of an appeal or a grievance that involves any clinical issues((-); and

(iii) Consider all comments, documents, records, and other information submitted by the individual or the individual's representative.

~~((e)) (d) That the individual and, if applicable, the individual's representative, ((receive)) receives a written notice containing the decision ((within)) no later than ninety calendar days from the date ((a grievance is received by)) the agency or BHO receives a grievance. This ((timeframe)) time frame can be extended up to an additional fourteen calendar days:~~

(i) If requested by the individual or the individual's representative; or

(ii) By the agency or BHO when additional information is needed and the agency or BHO ((can)) is able to demonstrate to the department upon the department's request that it needs additional information and ((that)) the added time is in the individual's interest.

~~((f)) (e) That the written notice includes((-~~

~~(i) The decision on)) the resolution of the grievance((-
(ii)), the reason for the decision((-); and the date the decision was made and is in an easily understood format following 42 C.F.R. Sec. 438.10(2017), which requires that each notice:~~

(i) Is written in the individual's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

~~((iii) The right to request an administrative hearing and the required timeframe to request the hearing.~~

~~((g))~~ (f) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are ~~((maintained and))~~:

(i) Kept for ~~((six))~~ a period of no less than ten years after the completion of the grievance process;

(ii) Made available to the department upon request as part of the state quality strategy and made available upon request to the center for medicare and medicaid services (CMS);

(iii) Kept in confidential files separate from the individual's clinical record; ~~((and))~~

(iv) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the grievance~~((:))~~; and

(g) Are accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the grievance;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the grievance, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the grievance was filed.

(9) When the BHO does not act within the grievance process time frames described in this section, the individual is considered to have exhausted the appeal process and has a right to request an administrative hearing.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0665 Notice of ~~((action))~~ adverse benefit determination. (1) ~~((The))~~ A behavioral health organization's (BHO's) notice of ~~((action))~~ adverse benefit determination provided to an individual must be in writing~~((, be))~~ and in ~~((the individual's primary language, be))~~ an easily understood ~~((and,))~~ format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(a) Is written in the individual's non-English language, if applicable;

(b) Contains the BHO's toll-free and TTY/TDY telephone number; and

(c) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language, TTY/TDY telephone services, and alternative formats to include large print and Braille.

(2) The notice of adverse benefit determination must, at a minimum, explain the following:

(a) The ~~((action))~~ adverse benefit determination the BHO ~~((or its contractor (behavioral health agency)))~~ has ~~((taken))~~ made or intends to ~~((take))~~ make;

(b) The ~~((reason))~~ reasons for the ~~((action and a))~~ adverse benefit determination, including citation of the rule(s) ~~((being implemented))~~ and criteria used for the basis of the decision;

(c) The right of the individual to be provided reasonable access to and copies of all documents, records, and other information relevant to the individual's adverse benefit determination upon request and free of charge;

(d) The individual's right to file an appeal of the adverse benefit determination with the BHO ~~((and the required timeframes if the individual does not agree with the decision or action))~~, including information on exhausting the BHO's one level of appeal and the individual's right to request an administrative hearing;

~~((d))~~ (e) The circumstances under which an expedited ~~((resolution))~~ appeal process is available and how to request it; and

~~((e))~~ (f) The individual's right to receive behavioral health services while an appeal is pending, how to make the request, and that the individual may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision ~~((or action))~~ in the notice of adverse benefit determination.

~~((2))~~ (3) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required ~~((timeframes))~~ time frame, or fails to provide services in a timely manner, or ~~((to))~~ when the BHO does not act within the grievance and appeal system ~~((timeframes,))~~ time frames as ~~((defined in rule))~~ identified within this chapter, it is considered ~~((a denial))~~ an adverse benefit determination. In these cases, the BHO sends a formal notice of ~~((action))~~ adverse benefit determination, which includes the individual's right to request an administrative hearing.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0670 Filing an appeal ~~((process))~~. (1) ~~((The appeal process is used by))~~ An individual may file an appeal to ask the behavioral health organization (BHO) to review an ~~((action))~~ adverse benefit determination that the BHO has communicated on a written notice of ~~((action (see WAC 388-877-0665)))~~ adverse benefit determination as defined in WAC 388-877-0655. An individual's representative may appeal an ~~((action))~~ adverse benefit determination with the individual's written consent. If a written notice of ~~((action))~~ adverse benefit determination was not received, an appeal may still be filed.

(2) The individual requesting review of an ~~((action))~~ adverse benefit determination must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) ~~((The appeal process can))~~ Appeals may be:

(a) Standard as described in subsection (6) and (7) of this section; or

(b) Expedited if the criteria in subsection ~~((7))~~ (8) of this section are met.

(4) The appeal process must:

(a) Provide an individual a reasonable opportunity to present evidence and ~~((allegations of fact or law))~~ make legal and factual arguments in person as well as in writing. The BHO must inform the individual of the limited time available.

(b) Provide the individual opportunity, ~~((before and during the appeal process,))~~ free of charge and sufficiently in advance to examine the individual's clinical record, including examining new or additional evidence, medical records, and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The individual, the individual's representative, or both; or

(ii) The legal representative of a deceased individual's estate.

(5) The BHO must ensure that the persons who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making nor a subordinate of any person who reviewed or decided on a previous level of appeal; ~~((and))~~

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service ~~((involved in the appeal.))~~ if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

(c) Consider all comments, documents, records, and other information submitted by the individual regardless of whether the information was considered in the initial review.

(6) ~~((Standard appeal process. The standard appeal process includes the following:~~

~~((a)) Standard appeals for ((actions communicated on a notice of action-)) **adverse benefit determination—continued services not requested.** An individual who disagrees with a decision ~~((or action))~~ communicated on a notice of ~~((action))~~ adverse benefit determination may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:~~

~~((i))~~ (a) The individual must file the appeal within ~~((ninety))~~ sixty calendar days from the date on the notice of ~~((action))~~ adverse benefit determination.

~~((ii))~~ (b) The BHO must confirm receipt of the appeal in writing within five business days.

~~((iii))~~ (c) The BHO must send the individual a written notice of the resolution ~~((within forty five))~~ no longer than thirty calendar days ~~((of receiving))~~ from the day the BHO received the appeal. This ~~((timeframe))~~ time frame may be extended up to fourteen additional calendar days if the individual requests an extension or the BHO ~~((can))~~ is able to demonstrate to the department upon the department's request that it needs additional information and that the added time is in the individual's interest. The written notice of the resolu-

tion must include~~((:))~~ all the information listed in subsection (9) of this section.

~~((A))~~ The BHO's decision;

~~((B))~~ The reason for the decision; and

~~((C))~~ The right to request an administrative hearing if the individual disagrees with the decision. The hearing must be requested within ninety calendar days from the date on the notice of the resolution.

~~((b))~~ (7) **Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested.** An individual ~~((receiving))~~ who receives a notice of ~~((action))~~ adverse benefit determination from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

~~((i))~~ (a) The individual must:

~~((A))~~ (i) File the appeal with the BHO on or before the later of the following:

~~((H))~~ (A) Within ten calendar days of the date on the notice of ~~((action))~~ adverse benefit determination; or

~~((H))~~ (B) The intended effective date of the BHO's proposed ~~((action-))~~ adverse benefit determination; and

~~((B))~~ (ii) Request continuation of services.

~~((i))~~ (b) The BHO must:

~~((A))~~ (i) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing within five business days;

~~((B))~~ (ii) Send a notice in writing that follows up on any oral confirmation made; and

~~((C))~~ (iii) Include in the notice that if the appeal decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

~~((iii))~~ (c) The BHO's written notice of the resolution must contain~~((:~~

(A) The BHO's decision on the appeal;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision and include the following timeframes:

~~((I))~~ Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be continued pending the outcome of the hearing.

~~((H))~~ Within ninety calendar days from the date on the notice of the resolution if the individual is not asking for continued services) all of the information listed in subsection (9) of this section.

~~((7))~~ (8) **Expedited appeal process.** If an individual or the individual's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life, physical or mental health ~~((and)),~~ or ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal

~~((can))~~ may be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the ~~((timeframe))~~ time frame for standard resolutions under subsection (6) or (7) of this section, and make reasonable efforts to give the individual prompt oral notice of the denial and follow up within two calendar days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) ~~The ((action taken on the notice of action is))~~ adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services; ~~((and))~~

(ii) The expedited appeal must be filed with the BHO, either orally or in writing ~~((;))~~ and within:

(A) Ten calendar days of the BHO's mailing the written notice of ~~((action that communicated the action;))~~ adverse benefit determination or the intended effective date of the BHO's proposed ~~((action))~~ adverse benefit determination, if the individual is requesting continued benefits; or

(B) ~~((Twenty))~~ Sixty calendar days from the date on the BHO's written notice of ~~((action that communicated the action))~~ adverse benefit determination if the individual is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the individual a written notice of the resolution ~~((within three business days of))~~ no longer than seventy-two hours after receiving the request for an expedited appeal.

(c) The BHO may extend the ~~((timeframes))~~ time frames up to fourteen additional calendar days if the individual requests an extension or the BHO ~~((can))~~ is able to demonstrate to the department upon the department's request that it needs additional information and that the added time is in the individual's interest. In this case the BHO must:

(i) Make reasonable efforts to give the individual prompt oral notice of the delay;

(ii) Within two calendar days give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision; and

(iii) Resolve the appeal as expeditiously as the individual's health condition requires and no later than the date the extension expires.

(d) The BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports an individual's appeal.

(9) The BHO's written notice of the resolution containing the decision on a standard appeal or expedited appeal must:

(a) Clearly state the BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

(b) Inform the individual of the right to an administrative hearing if the individual disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

(i) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be

continued pending the outcome of the hearing or if the individual is asking for an expedited hearing.

(ii) Within one hundred twenty calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

(c) Be in an easily understood format following 42 C.F.R. Sec. 438.10(2017), which requires that each notice:

(i) Is written in the individual's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

(10) When the BHO does not act within the appeal process time frames explained in this section, the individual is considered to have exhausted the appeal process and has a right to request an administrative hearing.

~~((8))~~ **(11) Duration of continued services during the appeal process.** When an individual has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO ~~((ensures))~~ must ensure the services are continued until one of the following occurs:

(a) The individual withdraws the appeal ~~((;))~~ or

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the individual and the individual does not request an administrative hearing within ten calendar days from the date the BHO mails the notice ~~((-(See)); see WAC 388-877-0675, administrative hearings, for rules on duration of continued services during the administrative hearing process. ~~((;))~~~~

~~((c))~~ The time period of a previously authorized service has expired.

~~((d))~~ A behavioral health treatment service limit of a previously authorized service has been fulfilled.

~~((9))~~ **(12) Reversal of an adverse benefit determination.** If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the BHO must authorize or provide the behavioral health service(s) no later than seventy-two hours from the date it receives notice of the adverse benefit determination being overturned.

(13) Recovery of the cost of behavioral health services in adverse decisions of appeals. If the final written notice of the resolution of the appeal is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of Medicaid services is limited to the first sixty days of services after the department or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741 (5)(g).

~~((10))~~ **(14) Recordkeeping and maintenance of appeals.** The BHO must ~~((maintain))~~ ensure that full records of all appeals ~~((and ensure an individual's records))~~ and mate-

rials received and compiled in the course of processing and attempting to resolve appeals are:

(a) Kept for ~~((six))~~ a period of no less than ten years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy and made available upon request to the centers for medicare and medicaid services (CMS);

(c) Kept in confidential files separate from the individual's clinical record; ~~((and))~~

(d) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the appeal; and

(e) Accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the appeal;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the appeal, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the appeal was filed.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0675 Administrative hearings. (1) An administrative hearing (also known as "fair hearing") is a proceeding before an administrative law judge (ALJ) that gives an individual, as defined in WAC ~~((388-877-0200))~~ 388-877-0655, an opportunity to be heard in disputes about ~~((a behavioral health program or service))~~ adverse benefit determinations or a decision of a behavioral health organization (BHO) to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) An individual ~~((must first exhaust the grievance process described in WAC 388-877-0660, or the appeal process described in WAC 388-877-0670 before requesting))~~ may request an administrative hearing for the following reasons:

(a) After an individual receives notice that the BHO upheld an adverse benefit determination;

(b) After an individual receives a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination; or

(c) If the BHO does not act within the grievance or appeal process time frames described in WAC 388-877-0660 and 388-877-0670. In this case, the individual is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(3) An individual ~~((requesting))~~ who requests an administrative hearing must do so within one of the following ~~((timeframes))~~ time frames:

(a) If continued services are not requested, a hearing must be requested within ~~((ninety))~~ one hundred twenty calendar days from~~((:~~

~~((i) The date on the written notice from the agency or behavioral health organization (BHO) at the end of the grievance process; or~~

~~((ii))~~ the date on the written notice of the resolution received from the BHO at the end of the appeal process or one hundred twenty calendar days from the date on the notice of determination.

(b) If continued medicaid services are requested pending the outcome of the administrative hearing, all of the following apply:

(i) The individual appealed a decision on ~~((a))~~ the notice of ~~((action must be))~~ adverse benefit determination for termination, suspension, or reduction of the individual's behavioral health services ~~((and the individual appealed this decision));~~

(ii) The individual ~~((received a written notification of the resolution of the appeal from the BHO that upholds the decision on the notice of action))~~ appealed the adverse benefit determination and the BHO upheld the adverse benefit determination; and

(iii) The individual requests an administrative hearing and continued behavioral health services within ten calendar days of the date on the written notification of the resolution.

(c) The BHO is not obligated to continue nonmedicaid services pending the result of an administrative hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.

(4) If an individual requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution or notice of determination. Subsection (3)(b) and (c) of this section applies if continued behavioral health services are requested.

~~((If a written notice was not received under subsection (3) or (4) of this section, the individual may still))~~ The BHO's failure to issue an appeal decision in writing within the time frames in WAC 388-877-0670 constitutes exhaustion of the appeal process and the individual may request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO ~~((continues))~~ must continue the individual's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The individual withdraws the hearing request.

(b) The administrative law judge issues a hearing decision adverse to the individual.

~~((c) The period covered by the original authorization of mental health services has expired.))~~

(7) If the administrative hearing decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the hearing was pending to the extent that they were provided solely because of the requirements of this section.

(8) ~~((For purposes of this chapter,))~~ Administrative hearings include ~~((administrative hearings,))~~ adjudicative proceedings ~~((s))~~ and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 WAC, chapter 10-08 WAC, or other law. Chapter 34.05 RCW and chapter 388-02 WAC govern cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

AMENDATORY SECTION (Amending WSR 16-13-087, filed 6/15/16, effective 7/16/16)

WAC 388-877-0680 Individual rights specific to medicaid recipients. (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all individuals, regardless of whether an individual is or is not a medicaid recipient, include:

- (i) All applicable statutory and constitutional rights;
- (ii) The participant rights provided under WAC 388-877-0600; and
- (iii) Applicable necessary supplemental accommodation services listed in chapter 388-472 WAC.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the department in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA) division of behavioral health and recovery (DBHR) website.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.

(iii) Receive information about the structure and operation of the BHO.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive post-stabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change behavioral health care providers at any time for any reason.

(xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Receive medically necessary services in accordance with the early periodic (~~screen~~) screening, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy, and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience, or retaliation.

(xxviii) Receive a second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in (~~42 C.F.R. § 438.206(3)~~) 42 C.F.R. Sec. 438.206 (b)(3) (2015).

(xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.

(xxx) File a grievance with the behavioral health agency or BHO if you are not satisfied with a service.

(xxxii) Receive a notice of (~~action~~) adverse benefit determination so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state (~~or act within the timeframes provided in 42 CFR § 438.408(b)~~).

(xxxiii) Request an administrative (fair) hearing if your (~~grievance or~~) appeal is not resolved in your favor or if the BHO does not act within the grievance or appeal process time frames described in WAC 388-877-0660 and 388-877-0670.

(xxxiv) Request services by the behavioral health ombuds office to help you (~~in filing~~) file a grievance or appeal(~~;~~) or (~~to~~) request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) (~~and certified by DBHR to provide~~) that provides DBHR-certified mental health (~~and/or~~) services, DBHR-certified substance use disorder services, or both, must ensure the medicaid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

WSR 17-15-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-149—Filed July 5, 2017, 3:13 p.m., effective July 10, 2017]

Effective Date of Rule: July 10, 2017.

Purpose: Amend recreational salmon fishing rules on the Yakima River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-05000L.

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

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

Reasons for this Finding: This emergency rule is needed to close the recreational salmon fishery because spring Chinook daily counts at Roza Dam have declined substantially signaling the end of the run. 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: July 7 [5], 2017.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective July 10, 2017:

WAC 220-312-05000L Exceptions to statewide rules—
Yakima River. (17-124)

WSR 17-15-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-152—Filed July 6, 2017, 3:41 p.m., effective July 7, 2017]

Effective Date of Rule: July 7, 2017.

Purpose: Amends freshwater recreational fishing in the Columbia river.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-06000M.

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

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

Reasons for this Finding: This emergency rule is needed to reopen adult Chinook salmon fishing which was closed by filing WSR 17-14-052. Those waters of the Columbia River from Buoy 10 upstream to Bonneville Dam are being reopened because the upgraded run size has increased the allocation for the lower river. This rule is consistent with compact action of July 6, 2017.

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: July 6, 2017.

Joe Stohr
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective July 7, 2017:

WAC 220-312-05000M Exceptions to statewide rules—
Columbia River. (17-143)

WSR 17-15-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-148—Filed July 7, 2017, 8:54 a.m., effective July 8, 2017]

Effective Date of Rule: July 8, 2017.

Purpose: Amend recreational salmon fishing rules on upper Columbia River and tributaries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-05000M, 220-312-06000L and 220-312-06000I; and amending WAC 220-312-050 and 220-312-060.

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

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

Reasons for this Finding: This emergency rule is necessary because a revised sockeye salmon forecast of one hundred thousand is half of the preseason forecast; all remaining sockeye should be directed towards escapement and hatchery broodstock. 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 3.

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

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

Date Adopted: July 7, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-05000P Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Chelan River (Chelan Co.):** When open for salmon, release sockeye.

(2) **Okanogan River (Okanogan Co.):**

(a) Effective immediately through August 15, 2017, in those waters from mouth to Hwy. 97 Bridge immediately

upstream of mouth it is permissible to retain hatchery trout. Min. size 12". Daily limit 10 hatchery TROUT. Barbless hooks required.

(b) When open for salmon, release sockeye.

(3) **Similkameen River (Okanogan Co.):** When open for salmon, release sockeye.

(4) **Wenatchee River (Chelan Co):** When open for salmon, release coho and sockeye.

NEW SECTION

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) From Washington/Oregon Border to Hwy. 395 Bridge at Pasco:

(a) Effective immediately through July 31, 2017; salmon and steelhead: daily limit of 6, up to 2 may be adult salmon or 1 adult salmon and 1 hatchery steelhead. Release all salmon other than hatchery Chinook.

(b) Effective August 1 through September 15, 2017; salmon and steelhead: daily limit of 6, up to 2 may be adult salmon or 1 adult salmon and 1 hatchery steelhead. Release all salmon other than Chinook and coho.

(c) All species: night closure except for anglers enrolled in the Pikeminnow Reward Program and targeting pikeminnow.

(2) From the Highway 395 Bridge at Pasco to the Interstate 182 Bridge in Richland:

(a) Effective immediately through August 15, 2017; daily limit of 4 salmon, of which no more than 1 may be an adult hatchery Chinook. Release wild adult Chinook and sockeye.

(b) Effective August 16 through September 15, 2017; daily limit of 6 salmon, up to 2 may be adults. Release sockeye.

(3) From the Interstate 182 Bridge in Richland to Priest Rapids Dam:

(a) Effective immediately through August 15, 2017; daily limit of 6 salmon, of which no more than 2 may be adult hatchery chinook. Release wild adult Chinook and sockeye.

(b) Effective August 16 through September 15, 2017; daily limit of 6 salmon, up to 2 may be adults. Release sockeye.

(4) From Priest Rapids Dam to Wells Dam: When open for salmon, release sockeye.

(5) From Wells Dam to the Hwy 173 Bridge at Brewster:

(a) Effective July 16 through August 15, 2017: it is permissible to retain hatchery trout. Min. size 12". Daily limit 10 hatchery TROUT. Barbless hooks required.

(b) When open for salmon, release sockeye.

(6) From the Hwy 173 Bridge at Brewster to Chief Joseph Dam:

(a) Effective immediately through August 15, 2017: it is permissible to retain hatchery trout. Min. size 12". Daily limit 10 hatchery TROUT. Barbless hooks required.

(b) When open for salmon, release sockeye.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-312-06000I Exceptions to statewide rules—Columbia River. (17-115)
- WAC 220-312-05000M Freshwater exceptions to statewide rules—Eastside. (17-127)
- WAC 220-312-06000L Freshwater exceptions to statewide rules—Columbia River. (17-127)

WSR 17-15-023**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-155—Filed July 7, 2017, 1:57 p.m., effective July 7, 2017, 1:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreation fishing rules in the lower Columbia River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-06000J; and amending WAC 220-312-060.

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

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

Reasons for this Finding: These emergency rules are needed to apply restrictions to protect wild steelhead listed under the Endangered Species Act and to ensure enough hatchery steelhead return to meet escapement goals. The pre-season forecast indicates approximately one hundred thirty thousand seven hundred summer-run steelhead will return to the Columbia River this year, the lowest number since 1980. This change allows night time bow hunting for carp. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 7, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Mainstem Columbia River from the Megler-Astoria Bridge upstream to The Dalles Dam**, effective immediately until further notice:

(a) Night angling closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow.

(b) Through July 31, only 1 hatchery steelhead may be retained.

(c) Effective August 1 until further notice, release all steelhead.

(2) **Mainstem Columbia River from a true north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank**, effective August 1 until further notice:

(a) Night angling closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow.

(b) Release all steelhead.

(3) **Mainstem Columbia River from The Dalles Dam upstream to the Hwy. 395 Bridge in Pasco**: effective immediately until further notice:

(a) Night angling closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program and actively fishing for pikeminnow.

(b) Only 1 hatchery steelhead may be retained.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 220-312-06000J Freshwater exceptions to statewide rules—Columbia River (17-119)

WSR 17-15-025**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-154—Filed July 7, 2017, 2:21 p.m., effective July 13, 2017, 7:00 p.m.]

Effective Date of Rule: July 13, 2017, 7:00 p.m.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the

Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-358-03000F; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: Extends the 2017 summer select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 6, 2017. 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, 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 1, Amended 0, 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: July 7, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-358-03000F Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, 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) Tongue Point/South Channel

(a) **Dates:** Thursday July 13 - Friday July 14; (12 hours)
Monday July 17 - Tuesday July 18; (12 hours)
Thursday July 20 - Friday July 21; (12 hours)
Monday July 24 - Tuesday July 25; (12 hours)
Thursday July 27 - Friday July 28; (12 hours)
Open hours are 7 PM to 7 AM

(b) **Area:** The Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

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

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

(d) **Miscellaneous:** Permanent transportation rules in effect.

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday July 13 - Friday July 14; (12 hours)

Monday July 17 - Tuesday July 18; (12 hours)

Thursday July 20 - Friday July 21; (12 hours)

Monday July 24 - Tuesday July 25; (12 hours)

Thursday July 27 - Friday July 28; (12 hours)

Open hours are 7 PM to 7 AM.

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

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

(d) **Miscellaneous:** Permanent transportation rules in effect.

(4) Allowable Possession: Salmon, white sturgeon and shad. A maximum of five white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The five white sturgeon possession and sales limit includes all Select Area fisheries.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-180 (14)(d)). Permanent transportation rules in effect.

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)).

(7) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 a.m. July 28, 2017:

WAC 220-358-03000F Columbia River seasons below Bonneville.

**WSR 17-15-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-157—Filed July 10, 2017, 1:24 p.m., effective July 10, 2017, 1:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-354-200.

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

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

Reasons for this Finding: This emergency rule is needed to make changes to the criteria for the selection process by which applicants will qualify to enter the pool of eligible beach seine permit holders. There is insufficient time to adopt permanent rules before the fishery begins.

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

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

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

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

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

Date Adopted: July 10, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-354-20000A Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear. Notwithstanding the provisions of WAC 220-354-200, effective immediately until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect.

(1) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department will work with the advisory board, per RCW 77.70.160(1), to establish criteria by which applicants will qualify to enter the pool. The pool established by this drawing will be maintained to replace any permit(s) which are voided.

(c) To be eligible for the pool, each applicant must be the Primary Operator on a Puget Sound Commercial salmon license.

(d) Each eligible applicant must have made a landing as an operator from a Puget Sound Commercial salmon fishery within the last 3 years.

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

WSR 17-15-032

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-151—Filed July 10, 2017, 1:45 p.m., effective July 16, 2017]

Effective Date of Rule: July 16, 2017.

Purpose: Amend freshwater recreational fishing rules for the Skagit River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-312-040.

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

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

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

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

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

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

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

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

Date Adopted: July 10, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000K Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective July 16, 2017, it is unlawful to violate the provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Skagit River, Mouth to Gorge Dam. Closed until further notice.

(2) Cascade River, mouth upstream. Closed until further notice.

(3) Sauk River, mouth to White Chuck River. Closed until further notice.

(4) Sauk River, White Chuck River mouth upstream, including North fork to North Fork Falls, and South fork to Elliot Creek. Closed through October 31, 2017.

(5) White Chuck River, mouth upstream. Closed through October 31, 2017.

(6) Suiattle River, mouth upstream. Closed through October 31, 2017.

WSR 17-15-042

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-159—Filed July 11, 2017, 10:29 a.m., effective July 11, 2017, 10:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational freshwater fishing rules for Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

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

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

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

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

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

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

Date Adopted: July 11, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-0400P Freshwater exceptions to statewide rules Notwithstanding the provisions of WAC 220-312-040, effective immediately until further notice the following rules apply. Unless otherwise amended all permanent rules remain in effect.

(1) **Puyallup River (Pierce County):** From the 11th Street Bridge to Carbon River (previously three sections now combined)

(a) Open for game fish and salmon August 15, 2017, until further notice, except closed August 20, August 27, September 3 through 5, September 10 through 12, September 17 through 19, September 24 through 26, October 1 through 3, October 8 through 10, October 15 through 17, October 22 through 24 and October 29 through 31.

(b) Salmon daily limit of 6, of which no more than 2 adults may be retained.

(2) **Nisqually River (Pierce County):** From the mouth to Military Tank Crossing Bridge.

(a) Open for game fish and salmon effective immediately through November 15, 2017.

(b) Salmon daily limit of 6, of which no more than 2 adults may be retained. Release wild Chinook and chum.

WSR 17-15-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-153—Filed July 11, 2017, 10:37 a.m., effective August 1, 2017]

Effective Date of Rule: August 1, 2017.

Purpose: Amend recreation[al] salmon fishing rules for the Snohomish and Skykomish rivers.

Citation of Existing Rules Affected by this Order: Amending WAC 220-312-040.

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

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

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

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

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

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

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

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

Date Adopted: July 11, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-0400L Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Snohomish River (Snohomish Co.):**

(a) Open effective August 1 through until further notice, from the Burlington-Northern Railroad bridges to Highway 9 Bridge, including all channels, sloughs, and interconnected waterways, but excluding all tributaries; salmon: Daily limit 3. Release Chinook and chum.

(b) Open effective August 16 through until further notice, from the Highway 9 Bridge to the confluence of the Skykomish and Snoqualmie rivers and all channels; salmon: Daily limit 3. Release Chinook and chum.

(2) **Skykomish River (Snohomish Co.):**

Open effective August 16 through until further notice, from the mouth to Lewis Street Bridge in Monroe; salmon: Daily limit 3. Release Chinook and chum.

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

WSR 17-15-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-162—Filed July 11, 2017, 12:57 p.m., effective July 11, 2017,
12:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules on Skagit Basin rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000J and 220-312-04000K; and amending WAC 220-312-040.

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

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

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

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

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

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

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

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

Date Adopted: July 11, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000R Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective immediately until further notice, it is unlawful to violate the provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(a) Skagit River:

(i) From the mouth to the Highway 536 Bridge at Mt. Vernon: Closed; July 11 through July 13 and July 16 until further notice.

(ii) From Hwy. 536 Bridge at Mt. Vernon (Memorial Hwy. Bridge) to mouth of Gilligan Creek:

(A) Open July 14 through July 21; Daily limit of three sockeye salmon. Night closure is in effect.

(B) Closed July 11 through 13 and July 22 until further notice

(iii) From the mouth of Gilligan Creek to Hwy 530 Bridge at Rockport: Closed; July 11 through 13 and July 16 until further notice.

(iv) Hwy 530 Bridge at Rockport to Gorge powerhouse at Newhalem: Closed; July 16 until further notice.

(b) Cascade River, mouth upstream: Closed; effective July 16 until further notice.

(c) Sauk River

(i) From the mouth to White Chuck River: Closed effective July 16 until further notice

(ii) From White Chuck River mouth upstream, including North fork to North Fork Falls, and South fork to Elliot Creek: Closed; effective July 16 through October 31, 2017.

(d) White Chuck River, mouth upstream: Closed; effective July 16 through October 31, 2017.

(e) Suiattle River, mouth upstream: Closed; effective July 16 through October 31, 2017.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-312-04000K Freshwater exceptions to statewide rules—Puget Sound. (17-151)

WAC 220-312-04000J Freshwater exceptions to statewide rules—Puget Sound. (17-145)

WSR 17-15-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-163—Filed July 11, 2017, 4:03 p.m., effective July 16, 2017, 9:00 p.m.]

Effective Date of Rule: July 16, 2017, 9:00 p.m.

Purpose: Amend rules in the Puget Sound recreational shrimp fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000D and 220-330-01000C; and amending WAC 220-330-070 and 220-330-010.

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

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. The state recreational share of spot shrimp has been taken in Marine Area 7 West. 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 11, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-330-07000E Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective immediately, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5 and 6 (excluding the Discovery Bay Shrimp District) are open to the harvest of all shrimp species.

(2) All waters equal to or less than 200 feet in depth in Marine Area 7 East are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

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

(4) All waters equal to or less than 250 feet in depth in Marine Area 13 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

(5) Marine Area 12: Open July 19, 2017, from 9:00 a.m. through 1:00 p.m.

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

NEW SECTION

WAC 220-330-01000C Shellfish—Daily limits. Notwithstanding the provisions of WAC 220-330-010, effective immediately, until further notice, in Marine Area 6 it is permissible for any one person to take up to 120 shrimp for personal use in any one day.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 9:00 p.m. July 16, 2017:

WAC 220-330-07000D Shrimp—Areas and seasons. (17-138)

WAC 220-330-01000B Shellfish—Daily limits. (17-100)

WSR 17-15-049

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-164—Filed July 11, 2017, 5:16 p.m., effective July 12, 2017, 6:00 a.m.]

Effective Date of Rule: July 12, 2017, 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 Rules Affected by this Order: Repealing WAC 220-359-02000B; and amending WAC 220-359-020.

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

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

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

Reasons for this Finding: Adds additional days to the treaty gillnet fishery and continues the sale of fish caught in Zone 6 Columbia River tribal fisheries with platform and hook and line gear for the summer season. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area

downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. Extends gill-net fishing during the summer season. The updated forecast for summer Chinook is seventy-four thousand one hundred fish, and five thousand nine hundred ninety harvestable fish remain available to the treaty tribes. The updated forecast for sockeye is ninety thousand four hundred fish, and one thousand four hundred eighty harvestable fish remain available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 14 and 28, and July 11, 2017. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

Date Adopted: July 11, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-359-02000C Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030 and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. 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 AM Wednesday July 12 to 6:00 PM Saturday July 15, 2017

(b) Gear: Gillnets. 7-inch minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold, but sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Immediately to 11:59 PM Monday July 31, 2017

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

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

(d) All sanctuaries for these gear types are in effect, except Spring Creek.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

(b) Area: Wind River, Drano Lake, and Klickitat River.

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

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

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

(a) Participants:

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

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

(b) Season: Immediately through 11:59 PM July 31, 2017. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(5) 24-hour quick reporting is required as provided in WAC 220-352-180, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 12, 2017:

WAC 220-359-02000B Columbia River salmon seasons above Bonneville Dam. (17-142)

WSR 17-15-057 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-156—Filed July 13, 2017, 2:11 p.m., effective July 16, 2017]

Effective Date of Rule: July 16, 2017.

Purpose: Amend recreational fishing rules on the Nooksack River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-04000M; and amending WAC 220-312-040.

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

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

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

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

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

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

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

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

Date Adopted: July 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000M Freshwater exceptions to statewide rules—Nooksack River. Notwithstanding the provisions of WAC 220-312-040, effective July 16 through August 31, 2017, it is permissible to fish in those waters of the Nooksack River from the Lummi Indian Reservation boundary to the yellow marker at the FFA High School barn at Deming.

- (1) Limit of four pink salmon.
- (2) It is unlawful to use bait.
- (3) It is unlawful to use anything other than single-point barbless hooks measuring 1/2 inch or less from point to shank.

REPEALER

The following section of the Washington Administrative is repealed effective September 1, 2017:

WAC 220-312-04000M Freshwater exceptions to statewide rules—Nooksack River.

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

WSR 17-15-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-158—Filed July 13, 2017, 2:16 p.m., effective August 1, 2017]

Effective Date of Rule: August 1, 2017.

Purpose: Amend recreational fishing rules on Stillaguamish River, North Fork.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-04000I; and amending WAC 220-312-040.

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

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

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

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

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

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

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

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

Date Adopted: July 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000N Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective August 1, 2017, until further notice the following waters are closed to fishing:

(1) **Stillaguamish River (Snohomish County):** From Marine Drive to the forks.

(2) **Stillaguamish River, North Fork (Snohomish County):** From the mouth to North Fork Falls (approximately one mile upstream of Cascade Creek).

(3) **Stillaguamish River, South Fork (Snohomish County):** From the mouth to 400 feet downstream of the outlet to Granite Falls fishway.

(4) **Pilchuck Creek (Snohomish County):** From the mouth to the Highway 9 Bridge and from the Highway 9 Bridge to Pilchuck Falls.

(5) **Boulder River (Snohomish County) (N.F. Stillaguamish River tributary):** From the mouth to Boulder Falls.

(6) **Canyon Creek (Snohomish County) (S.F. Stillaguamish River).**

(7) **Squire Creek (Snohomish County) (N.F. Stillaguamish River tributary).**

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2017:

WAC 220-312-04000I Freshwater exceptions to statewide rules—Puget Sound. (17-140)

WSR 17-15-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-161—Filed July 13, 2017, 2:18 p.m., effective August 1, 2017]

Effective Date of Rule: August 1, 2017.

Purpose: Amend recreation[a] fishing rules for listed Skagit Basin streams.

Citation of Existing Rules Affected by this Order: Amending WAC 220-312-040.

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

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

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

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

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

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

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

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

Date Adopted: July 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000Q Freshwater exceptions to statewide rules Notwithstanding the provisions of WAC 220-312-040, effective immediately until further notice the following rules apply. Unless otherwise amended all permanent rules remain in effect.

(1) Effective August 1, 2017, until further notice the following waters are closed to angling:

- (a) Buck Creek (Snohomish/Skagit Co.)
- (b) Camp Creek (Snohomish Co.)
- (c) Downey Creek (Snohomish/Skagit Co.)
- (d) Found Creek (Skagit Co.)
- (e) Kindy Creek (Skagit Co.)
- (f) Lime Creek (Snohomish Co.)
- (g) Marble Creek (Skagit Co.)
- (h) Milk Creek (Snohomish Co.)
- (i) Pugh Creek (Snohomish Co.)
- (j) Straight Creek (Snohomish Co.)
- (k) Sulphur Creek (Snohomish Co.)
- (l) Tenas Creek (Skagit Co.)

(2) Effective August 16, 2017, until further notice the following waters are closed to angling:

- (a) All Creek (Snohomish/Skagit Co.)
- (b) Bacon Creek (Skagit/Whatcom Co.)
- (c) Boulder Creek (Skagit Co.)
- (d) Diobsud Creek (Skagit Co.)
- (e) Goodell Creek (Whatcom Co.)
- (f) Illabot Creek (Skagit Co.)
- (g) Jordan Creek (Skagit Co.)
- (h) Ladder Creek (Whatcom Co.)

WSR 17-15-064

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-166—Filed July 13, 2017, 4:00 p.m., effective July 13, 2017, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Bogachiel River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-312-020.

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

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

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

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

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

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

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

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

Date Adopted: July 13, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000H Freshwater exception to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective immediately until further notice, it is permissible to fish for salmon in those waters of the Bogachiel River from Mill Creek (upstream of the Bogachiel hatchery) to the Hwy. 101 Bridge. Daily limit of 6 salmon, of which 2 may be adults. Release wild Chinook and wild coho.

WSR 17-15-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-160—Filed July 14, 2017, 11:47 a.m., effective July 23, 2017]

Effective Date of Rule: July 23, 2017.

Purpose: Amend rules for calculation of actual costs of producing copies of public records declared to be unduly burdensome - adoption of statutory fee schedule.

Statutory Authority for Adoption: RCW 42.56.120.

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

Reasons for this Finding: Under the Public Records Act (PRA), agencies have the ability to charge a requester for certain costs associated with providing copies of records in response to the requester's public records request. In the 2017 legislative session, the legislature amended the provision of the PRA that governs charges for providing public records. Under the law prior to the 2017 amendments, agencies could only charge for photocopies, not scanned records and other electronic records, but the majority of records are now provided in electronic format. The 2017 amendments allow agencies to charge requesters for things like scanning records, providing electronic records via email or other electronic delivery means, and providing records on a CD or thumb drive.

HB [EHB] 1595, passed in the 2017 legislative session, amended RCW 42.56.120, the provision of the PRA that governs agency charges to requesters for providing copies of public records. These amendments in HB 1595 were designed to modernize this provision to reflect changes in the way agencies provide copies of records to requesters.

HB [EHB] 1595 becomes law on July 23, 2017, and a rule must be in place that establishes the actual costs of producing records, or a rule must be in place that declares the calculation of actual costs would be "unduly burdensome." Otherwise an agency would not be able to impose fees on PRA requestors. The Washington department of fish and wildlife (WDFW) is taking the latter approach and will declare that it will be "unduly burdensome" to calculate actual costs and will file an emergency rule. This declaration will allow WDFW to utilize the statutory default fee schedule created by the legislature in the 2017 amendments starting on July 23, 2017, the date the legislation goes into effect, and to be in full compliance with the PRA, as amended. The agency will be filing a preproposal statement of inquiry to begin the permanent rule-making 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: July 14, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-120-09000A Calculation of actual costs of producing copies of public records declared to be unduly burdensome - adoption of statutory fee schedule. Notwithstanding the provisions of chapter 220-120 WAC, effective July 23, 2017, until further notice the following rules apply:

(1) Pursuant to RCW 42.56.120(2), as amended by Chapter 304, by Laws of 2017, sec. 3, the Washington State Department of Fish and Wildlife declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The Washington State Department of Fish and Wildlife may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by Chapter 304, by Laws of 2017, sec. 3.

WSR 17-15-083
EMERGENCY RULES
DEPARTMENT OF LICENSING

[Filed July 17, 2017, 12:08 p.m., effective July 23, 2017]

Effective Date of Rule: July 23, 2017.

Purpose: This emergency rule making is necessary to meet the requirements of SSB 5289 (2017) - modifying the infraction of and penalties for distracted driving. Amendments will align the WAC with the new statutes and include updating and deleting references.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-160, 308-108-165, and 308-330-464.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.2891, 46.82.290, and 46.90.010.

Other Authority: SSB 5289 (2017).

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: SSB 5289 (2017) goes into effect on July 23, 2017; this emergency rule making is necessary to provide guidance to law enforcement, driver school instructors and Washington drivers.

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

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

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

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

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

Date Adopted: July 17, 2017.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-16-101, filed 8/2/16, effective 9/2/16)

WAC 308-104-160 Moving and nonmoving violations defined. For purposes of RCW 46.20.2891, 46.65.020, and this chapter, the term "moving violation" means any violation of vehicle laws listed in this section that is committed by the driver of a vehicle, while the vehicle is moving. However, being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is also considered a moving violation for the purposes of this section. Parking violations, equipment violations or paperwork violations relating to insurance, registration, licensing and inspection are considered "nonmoving violations." Moving violations are those violations included in the following list or violations of substantially similar laws, administrative regulations, local laws, ordinances, regulations, or resolutions of a political subdivision of this state, the federal government, or any other state:

(1) Driving while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502;

(2) Physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.504;

(3) Vehicular homicide, as defined by RCW 46.61.520;

(4) Vehicular assault, as defined by RCW 46.61.522;

(5) Reckless driving, as defined by RCW 46.61.500;

(6) Racing, as defined by RCW 46.61.530;

(7) Embracing, as defined by RCW 46.61.665;

(8) Hit and run (injury, death, striking the body of a deceased person, or occupied vehicle), as defined by RCW 46.52.020;

(9) Attempting to elude a police vehicle, as defined by RCW 46.61.024;

(10) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.342, 46.20.345, or 46.20.-394;

(11) Reckless endangerment of roadway workers, as defined in RCW 46.61.527;

(12) Driver under twenty-one driving or being in physical control of a motor vehicle after consuming alcohol or marijuana, as defined in RCW 46.61.503;

(13) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;

(14) Open container violation (driver), as defined by RCW 46.61.519 or 46.61.745;

(15) Negligent driving in the first degree, as defined by RCW 46.61.5249;

(16) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;

(17) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;

(18) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;

(19) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.015, 46.61.020, 46.61.021, or 46.61.-022;

(20) Disobey school patrol, as defined by RCW 46.61.385;

(21) Speed too fast for conditions, as defined by RCW 46.61.400;

(22) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;

(23) Speeding in a school zone, as defined by RCW 46.61.440;

(24) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;

(25) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(26) Failure to keep to the right, as defined by RCW 46.61.100 or 46.61.105;

(27) Wrong way on a one-way street or rotary traffic island, as defined by RCW 46.61.135;

(28) Improper lane change or travel, as defined by RCW 46.61.140;

(29) Straddling or driving over centerline, as defined by RCW 46.61.140;

(30) Driving on the wrong side of the road, as defined by RCW 46.61.150;

(31) Crossing divider, as defined by RCW 46.61.150;

(32) Improper entrance to or exit from freeway, as defined by RCW 46.61.155;

(33) Violating restrictions on a limited access highway while driving a motor vehicle, as defined by RCW 46.61.160;

(34) High occupancy vehicle lane violation, as defined by RCW 46.61.165;

(35) Improper overtaking or passing, as defined by RCW 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, or 46.61.428;

- (36) Passing stopped school bus, as defined by RCW 46.61.370;
- (37) Passing stopped private carrier bus, as defined by RCW 46.61.375;
- (38) Following too closely, as defined by RCW 46.61.-145;
- (39) Following fire apparatus, as defined by RCW 46.61.635;
- (40) Crossing fire hose, as defined by RCW 46.61.640;
- (41) Driving on sidewalk, as defined by RCW 46.61.-606;
- (42) Driving through safety zone, as defined by RCW 46.61.260;
- (43) Driving with wheels off roadway, as defined by RCW 46.61.670;
- (44) Impeding traffic, as defined by RCW 46.61.100, 46.61.425, or 46.20.427;
- (45) Improper turn, as defined by RCW 46.61.290;
- (46) Prohibited turn, as defined by RCW 46.61.295;
- (47) Failure to signal or improper signal, as defined by RCW 46.61.305, 46.61.310, or 46.61.315;
- (48) Improper backing, as defined by RCW 46.61.605;
- (49) Unlawful operation of motorcycle on roadway, as defined by RCW 46.61.608, 46.61.612, or 46.61.614;
- (50) Reckless endangerment, as defined by RCW 9A.36.050;
- (51) Failure to maintain control, as defined by RCW 46.61.445;
- (52) Violation of license restriction(s), as defined by RCW 46.20.041 or 46.20.740;
- (53) Violation of instruction permit restrictions, as defined by RCW 46.20.055;
- (54) Violation of out-of-service order, as defined by RCW 46.25.090;
- (55) Obstructed vision or control, as defined by RCW 46.61.615;
- (56) Carrying persons or animals outside of vehicle, as defined by RCW 46.61.660;
- (57) Carrying passenger in towed vehicle, as defined by RCW 46.61.625;
- (58) Coasting on downgrade, as defined by RCW 46.61.-630;
- (59) Violation of child restraint requirements, as defined by RCW 46.61.687;
- (60) Carrying child under the age of five years old on motorcycle, as defined by RCW 46.37.530;
- (61) Carrying passenger improperly on motorcycle, as defined by RCW 46.61.610;
- (62) No helmet, goggles, mirrors, windshield or face shield, as defined by RCW 46.37.530;
- (63) Operating moped on freeway or sidewalk, as defined by RCW 46.61.710;
- (64) Driving without lights, as defined by RCW 46.37.-020;
- (65) Failure to dim lights, as defined by RCW 46.37.230;
- (66) Operating motorcycle without lights, as defined by RCW 46.37.522;
- (67) No lamp, reflector, or flag on extended load, as defined by RCW 46.37.140;

(68) Wearing earphones or viewing television in vehicle, as defined by RCW 46.37.480;

(69) Failure to secure load, as defined by RCW 46.37.-490;

(70) Spilling load, as defined by RCW 46.61.655;

(71) Improper towing, as defined by RCW 46.44.070;

(72) Using a (~~hand-held mobile telephone~~) personal electronic device while driving a (~~commercial~~) motor vehicle, as defined by (~~RCW 46.61.667 (1)(b))~~) section 1, chapter 334, Laws of 2017; and

(73) (~~Texting while driving a commercial motor vehicle~~) Driving dangerously distracted, as defined by (~~RCW 46.61.668 (1)(b))~~) section 3, chapter 334, Laws of 2017.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-165 Prohibition on wireless communication devices during instruction. (1) Driving school instructors must not use (~~wireless communication~~) personal electronic devices, hands-free or otherwise, that distract from or interfere with the behind the wheel or classroom instruction task. This includes the use of any communications devices that result in verbal or written text responses while conducting instruction. While supervising the operation of a vehicle, instructors are additionally prohibited from sending or receiving messages with these devices. Ring volumes for these devices, or any phone in proximity, are to be silenced so as not to interfere in any way with the student learning or interacting with the instructor.

(2) This section does not apply to voice activated GPS devices or classroom devices that are being used as part of an approved curriculum. This section also does not preclude the use of devices to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property, as permitted under (~~RCW 46.61.667~~) section 1, chapter 334, Laws of 2017.

(3) An unreasonable risk associated with a failure to obey this section is a violation of RCW 18.235.130(4).

AMENDATORY SECTION (Amending WSR 15-24-085, filed 11/30/15, effective 12/31/15)

WAC 308-330-464 RCW sections adopted—Operation and restrictions. The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, (~~46.61.667, 46.61.668~~) section 1, chapter 334, Laws of 2017, section 3, chapter 334, Laws of 2017, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.705, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, and 46.61.740.

WSR 17-15-112
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 18, 2017, 12:59 p.m., effective July 23, 2017]

Effective Date of Rule: July 23, 2017.

Purpose: ESSHB [E2SHB] 1802 creates the veterans' in-state service shared leave pool to allow state employees the ability to donate their leave to a pool so that employees that are veterans as defined under RCW 41.04.005 or employees who are spouses of veterans as defined under RCW 41.04.005 that require assistance can use leave from the pool to attend medical appointments or treatments for a service connected injury or disability.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-390 and 357-31-447.

Statutory Authority for Adoption: Chapter 173, Laws of 2017 (ESSHB [E2SHB] 1802).

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: Allows state employees to donate leave to certain employees for medical appointments or treatments for a service connected injury or disability.

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 17, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 17, Amended 2, Repealed 0.

Date Adopted: July 18, 2017.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; ((or))

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655;

(e) The employee is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability; or

(f) The employee is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments.

(2) The illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 16-17-092, filed 8/18/16, effective 9/20/16)

WAC 357-31-447 When must an employer approve a shared leave request for an employee? An employer must approve a ((new)) shared leave request for an employee;

(1) If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account; or

(2) To allow employees that are veterans as defined under RCW 41.04.005, and employees that are spouses of veterans who are required to provide assistance for their spouses to attend medical appointments or treatments for a service connected injury or disability, to access shared leave from the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-750 What is the purpose of the veterans' in-state service shared leave pool? The veterans' in-state service shared leave pool was created to allow general government and higher education employees to voluntarily donate their leave to be used for:

(1) An employee who is a veteran as defined in RCW 41.04.005 to attend medical appointments or treatments for a service connected injury or disability; or

(2) An employee who is a spouse of a veteran as defined in RCW 41.04.005 that requires assistance while attending medical appointments or treatments for a service connected injury or disability.

NEW SECTION

WAC 357-31-755 Who shall administer the veterans' in-state service shared leave pool? The department of veterans' affairs shall administer the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-760 What definitions apply to the veterans' in-state service shared leave pool? The following definitions apply to the veterans' in-state service shared leave pool:

(1) "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained. This does not include employees of school districts and educational service districts or those employees called to service in the uniformed services.

(2) "Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

(3) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(4) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the com-

missioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(5) "Veteran" has the meaning provided in RCW 41.04.-005.

NEW SECTION

WAC 357-31-765 Must employers have a written policy regarding the veterans' in-state service shared leave pool? Each employer must have a written policy which at a minimum must address:

(1) Eligibility requirements for use of the veterans' in-state service shared leave pool;

(2) Donation of leave;

(3) Use of pool leave; and

(4) Abuse of pool.

NEW SECTION

WAC 357-31-770 Is participation in the veterans' in-state service shared leave pool voluntary? Participation in the veterans' in-state service shared leave pool, must at all times, be voluntary on the part of the donating and receiving employee.

NEW SECTION

WAC 357-31-775 What criteria does an employee have to meet to be eligible to request leave from the veterans' in-state service shared leave pool? Employees are eligible to request leave from the veterans' in-state service shared leave pool if:

(1) The employee is a veteran and is attending medical appointments or treatments for a service connected injury or disability; or

(2) The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability.

NEW SECTION

WAC 357-31-780 How must employees who are receiving leave from the veterans' in-state service shared leave pool be treated during their absence? An employee using shared leave under the veterans' in-state services shared leave pool receives the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.

NEW SECTION

WAC 357-31-785 Is shared leave received under the veterans' in-state service shared leave pool included in the shared leave limits specified in RCW 41.04.665? Shared leave received under the veterans' in-state service shared leave pool is not included in the five hundred twenty-two day total specified in RCW 41.04.665.

NEW SECTION

WAC 357-31-790 May employees donating leave direct the donation to a specific individual? Leave donated under this section is "pooled" and is withdrawn from the pool by eligible employees according to priorities established by the department of veterans' affairs. Leave donated cannot be directed to a specific individual. All employees who donate must specify their intent to donate to the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-795 What types of leave can an employee donate for the purposes of the veterans' in-state service shared leave pool? An employee may donate vacation leave, sick leave, or all or part of a personal holiday for purposes of the veterans' in-state service shared leave pool under the following conditions:

(1) Vacation leave: The donating employee's employer approves the employee's request to donate a specified amount of vacation leave to the veterans' in-state service shared leave pool and the full-time employee's request to donate leave will not cause their vacation leave balance to fall below eighty hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated.

(2) Sick leave: The donating employee's employer approves the employee's request to donate a specified amount of sick leave to the veterans' in-state service shared leave pool and the employee's request to donate leave will not cause their sick leave balance to fall below one hundred seventy-six hours after the transfer.

(3) Personal holiday: The donating employee's employer approves the employee's request to donate all or part of their personal holiday to an employee authorized to receive leave under the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-800 How much leave may an employee withdraw from the veterans' in-state service shared leave pool? Shared leave paid under this section, in combination with an employee's salary will not exceed the level of the employee's state monthly salary as defined in WAC 357-31-760(2).

NEW SECTION

WAC 357-31-805 What documentation may an employee seeking shared leave under the veterans' in-state service shared leave pool be required to submit? Employees seeking shared leave under the veterans' in-state service shared leave pool must provide a veterans affairs benefits summary letter from the U.S. Department of Veterans Affairs and a copy of "DD Form 214" verifying that:

(1) The employee has a service connected injury or disability; or

(2) The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability.

NEW SECTION

WAC 357-31-810 What rate of pay is paid to the employee receiving leave under the veterans' in-state service shared leave pool? The receiving employee is paid their regular rate of pay.

NEW SECTION

WAC 357-31-815 What happens if the veterans' in-state service shared leave pool does not have sufficient balance to cover all leave requests? The veterans' in-state service shared leave pool cannot grant more leave than the leave balance available at the time a request is received by the department of veterans' affairs.

NEW SECTION

WAC 357-31-820 May employers establish restrictions on the amount of leave an employee may receive under this section? Except in the event of a violation of rule or statute, an employer is required to permit an eligible employee to receive leave from the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-825 May an employer establish restrictions on the amount of leave an employee may donate under this section? An employer may limit the amount of leave an employee may donate under this section, if authorization of such donation would be in violation of rule or statute.

NEW SECTION

WAC 357-31-830 When an employer and/or the department of veterans' affairs has determined that abuse of the veterans' in-state service shared leave pool has occurred will the employee have to repay the shared leave drawn from the pool? Employers and/or the department of veterans' affairs shall investigate any alleged abuse of the veterans' in-state service shared leave pool and on a finding of wrongdoing the employee may be required to repay all of the shared leave received from the veterans' in-state service shared leave pool. The only time an employee will have to repay leave credits is when there is a finding of wrongdoing.

WSR 17-15-113**EMERGENCY RULES****DEPARTMENT OF CORRECTIONS**

[Filed July 18, 2017, 1:06 p.m., effective July 23, 2017]

Effective Date of Rule: July 23, 2017.

Purpose: Compliance with HB [EHB] 1595 requiring each state agency to declare by rules or regulations the reasons it is not calculating the actual costs it charges for providing public records, if doing so would be unduly burdensome - adoption of the statutory fee schedule.

Citation of Existing Rules Affected by this Order:
Amending WAC 137-08-110.

Statutory Authority for Adoption: RCW 42.56.120.

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

Reasons for this Finding: Under the Public Records Act (PRA), agencies have the ability to charge a requestor for certain costs associated with providing copies of records in response to the requestor's public records request. In the 2017 legislative session, the legislature amended the provision of the PRA that governs public records charges. Under the law prior to the 2017 amendments, agencies could only charge for photocopies, not scanned records and other electronic records. The 2017 amendments allow agencies to charge requestors for things like scanning records, providing records via email or other means of electronic delivery.

HB [EHB] 1595, passed in the 2017 legislative session, amending RCW 42.56.120, the provision of the PRA that governs agency charges to requestors for providing copies of public records. These amendments in EHB 1595 were designed to modernize this provision to reflect changes in the way agencies provide copies of records to requestors.

HB [EHB] 1595 becomes law on July 23, 2017, and a rule must be in place that establishes the actual costs of producing records, or a rule must be in place that declares the calculation of actual costs would be "unduly burdensome." Otherwise an agency would not be able to impose any fee on PRA requestors. DOC is taking the latter approach and will declare that it will be "unduly burdensome" to calculate actual costs and will file an emergency rule. This declaration will allow DOC to utilize the statutory default fee schedule created by the legislature in the 2017 amendments beginning July 23, 2017, the date the legislation goes into effect, and to be in full compliance with the PRA, as amended. The agency will be filing a preproposal statement of inquiry to begin the permanent rule-making 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 1, Repealed 0.

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

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

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

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

Date Adopted: July 18, 2017.

Steven Sinclair
Secretary

AMENDATORY SECTION (Amending WSR 85-13-020, filed 6/10/85)

WAC 137-08-110 Fees—Inspection and copying. (1) Pursuant to RCW 42.56.120(2), the department declares for the following reasons that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and calculate actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The department may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

(3) No fee shall be charged for the inspection of public records.

~~((2) The department shall collect a fee of twenty cents per page plus postage to reimburse itself for the cost of providing copies of public records.~~

~~(3))~~ (4) Nothing contained in this section shall preclude the department from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the department.

~~((4))~~ (5) The secretary of the department or his designee is authorized to waive any of the foregoing copying costs.

WSR 17-15-115
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed July 18, 2017, 1:26 p.m., effective July 23, 2017]

Effective Date of Rule: July 23, 2017.

Purpose: The department is amending WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding?, to align with recent changes in RCW 26.44.100 that require the department to send unfounded finding letters to subjects via mail or email instead of certified mail, return receipt requested.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-15-069.

Statutory Authority for Adoption: RCW 26.44.100.

Other Authority: P.L. 93-247, P.L. 111-320.

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: To align with changes to state legislation. This change goes into effect July 23, 2017.

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

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

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

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

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

Date Adopted: July 12, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-041, filed 7/28/15, effective 8/28/15)

WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding? (1) CPS notifies the alleged perpetrator of the founded finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(2) CPS notifies the alleged perpetrator of the unfounded finding by sending the CPS finding notice via mail, to the last known address, or email. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(3) When CA is actively working with the alleged perpetrator and the certified mail sent pursuant to subsection (1) of this section is returned, CA will attempt to personally serve the CPS founded findings letter to the alleged perpetrator.

WSR 17-15-117
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-167—Filed July 18, 2017, 4:11 p.m., effective July 19, 2017, 6:00 a.m.]

Effective Date of Rule: July 19, 2017, 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 220-359-02000C; and amending WAC 220-359-020.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No.

2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Adds additional days to the treaty gillnet fishery and continues the sale of fish caught in Zone 6 Columbia River tribal fisheries with platform and hook and line gear for the summer season. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. The updated forecast for summer Chinook is sixty-eight thousand seven hundred fish, and five thousand nine hundred forty-three harvestable fish remain available to the treaty tribes. The updated forecast for sockeye is eighty-eight thousand two hundred fish, and one thousand nine hundred twenty-four harvestable fish remain available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 14 and 28, July 11 and 18, 2017. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

Date Adopted: July 18, 2017.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-359-02000D Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030 and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. 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 AM Wednesday July 19 to 6:00 PM Saturday July 22, 2017

6:00 AM Monday July 24 to 6:00 PM Friday July 28, 2017

(b) Gear: Gillnets. No minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon may not be sold, but sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

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

(a) Season: Immediately to 11:59 PM Monday July 31, 2017

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

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

(d) All sanctuaries for these gear types are in effect, except Spring Creek.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

(b) Area: Wind River, Drano Lake, and Klickitat River.

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

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

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

(a) Participants:

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

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

(b) Season: Immediately through 11:59 PM July 31, 2017. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(5) 24-hour quick reporting is required as provided in WAC 220-352-180, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 19, 2017:

WAC 220-359-02000C Columbia River salmon seasons
above Bonneville Dam. (17-164)