

WSR 17-20-001
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 21, 2017, 8:57 a.m., effective September 21, 2017, 8:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To align state rules governing vocational education program minimum expenditures to the changes made in the 2017-19 Appropriations Act.

Citation of Rules Affected by this Order: Amending WAC 392-121-570, 392-121-571, and 392-121-573.

Statutory Authority for Adoption: RCW 42.56.070, 42.56.120.

Other Authority: SSB 5883 - 2017-19 Biennial Appropriations Act.

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

Reasons for this Finding: The 2017-19 Biennial Operating Appropriations Act limits indirect cost charges to school district state-funded vocational-secondary programs. Emergency rules are therefore necessary to reduce the vocational program indirect rate to five percent, ensure that no district has minimum expenditures greater than its total program allocation, and ensure that districts and vocational education programs have access [to] the correct proportionate share of their allocations as directed in the Appropriations Act.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: September 20, 2017.

Chris P. S. Reykdal
 State Superintendent
 of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-570 Vocational indirect cost limit—Applicable code provisions—Purpose—Effective date. (1) WAC 392-121-570 through 392-121-578 define the (~~five~~) five percent limit on indirect cost charges to school district state-funded vocational-secondary programs as required by the Biennial Operating Appropriations Act. These rules do

not apply to federal vocational funding which is governed by federal policies.

(2) The purpose of these sections is to assure that state allocations for vocational education are expended by school districts and charter schools to support state vocational programs. The minimum levels defined here are not to be construed as recommended expenditure levels.

(3) These sections are effective for the (~~2002-03~~) 2017-18 school year and thereafter.

(4) WAC 392-121-570 through 392-121-578 also apply to program 34, with program 34 substituted wherever program 31 appears. Running start does not apply to program 34.

AMENDATORY SECTION (Amending WSR 17-01-020, filed 12/12/16, effective 12/24/16)

WAC 392-121-571 Vocational indirect cost limit—Definitions. As used in WAC 392-121-570 through 392-121-578:

(1) "Program 31" means the high school vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(2) "Program 34" means the middle school vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(3) "Basic allocation for vocational students" means the amount of money generated by a school district's or charter school's vocational full-time equivalent enrollment in the general apportionment formula using the state funding formula factors including the grade 4-12 staffing ratios without enhancement, and using the district's or charter school's average certificated instructional district-wide staff mix factor (~~(for program 31 staff)~~) from the district's S-275 personnel report.

(4) "Enhancement allocation for vocational students" means the additional money above the basic allocation for vocational students generated by a school district's or charter school's vocational full-time equivalent enrollment as a result of the enhanced state vocational staffing ratio and enhanced nonemployee related cost allocation for vocational students. This enhancement shall be calculated using the (~~district's~~) district-wide or charter school's average certificated instructional staff mix factor (~~(for program 31)~~).

(5) "Vocational running start allocation" means the amount generated in the general apportionment formula by a school district's or charter school's running start students enrolled in vocational courses in a community or technical college pursuant to chapter 392-169 WAC.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-573 Vocational indirect cost limit—Calculation of minimum program 31 expenditures. Each school district's or charter school's minimum program 31 expenditures equal the sum of the following amounts:

(1) (~~Eighty-five~~) Ninety-five percent of the total basic and vocational enhancement allocations for vocational students;

(2) Ninety-three percent of the vocational running start allocation; plus

(3) Any carryover from the prior school year allowed under WAC 392-121-578.

WSR 17-20-004
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed September 21, 2017, 1:18 p.m., effective September 22, 2017]

Effective Date of Rule: September 22, 2017.

Purpose: Public Law 114-22 amended the Child Abuse Prevention and Treatment Act (CAPTA), a federal law for state receipt of federal funds, to require that a child be considered a victim of "child abuse and neglect" and of "sexual abuse" if the child is a victim of sex trafficking. To continue to qualify for federal funds, this WAC must be changed to incorporate sex trafficking on May 29, 2017. These changes also align with anticipated changes to the Washington state criminal code. This is an extension of the current emergency WAC in place that was filed as WSR 17-12-005.

Citation of Rules Affected by this Order: Amending WAC 388-15-009.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, 74.13.031, chapter 26.44 RCW.

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: This amendment is needed so that the children's administration can continue to qualify for federal CAPTA funds.

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 the Request of a Non-governmental 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: September 20, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-011, filed 6/22/07, effective 7/23/07)

WAC 388-15-009 What is child abuse or neglect?
Child abuse or neglect means the injury, sexual abuse, or sexual exploitation of a child by any person under circumstances

which indicate that the child's health, welfare, or safety is harmed, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the nonaccidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

- (a) Throwing, kicking, burning, or cutting a child;
- (b) Striking a child with a closed fist;
- (c) Shaking a child under age three;
- (d) Interfering with a child's breathing;
- (e) Threatening a child with a deadly weapon;
- (f) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare or safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide child-care for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, sex trafficking and commercial sexual exploitation as those terms are defined by law. Sexual exploitation also includes, but is not limited to, such actions as allowing, (~~permitting~~) compelling, encouraging, aiding, or otherwise causing a child to (~~engage~~) participate in one or more of the following:

- (a) (~~Prostitution~~) Any sex act when anything of value is given to or received by any person for the sex act;
- (b) Sexually explicit, obscene, or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; (~~or~~)
- (c) Sexually explicit, obscene, or pornographic activity as part of a live performance(~~s~~) or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent,

legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, or safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, or safety. Negligent treatment or maltreatment includes, but is not limited, to:

(a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, or safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves;

(b) Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child; or

(c) The cumulative effects of a pattern of conduct, behavior or inaction by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

WSR 17-20-005

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-258—Filed September 21, 2017, 2:31 p.m., effective September 22, 2017]

Effective Date of Rule: September 22, 2017.

Purpose: Amends Puget Sound freshwater areas - Snohomish, Skykomish and Snoqualmie rivers.

Citation of 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 to protect pink runs to the Snohomish River watershed. Inseason run-size assessments conducted by state and tribal comanagers indicate that pink run sizes are below preseason forecasts in the Snohomish Basin. 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 the Request of a Non-governmental 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: September 21, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective September 22, 2017, until further notice, it is unlawful to retain pink salmon in the following waters:

- (1) Snohomish River (Snohomish Co.)
- (2) Skykomish River (Snohomish Co.)
- (3) Snoqualmie River (King/Snohomish Co.)

WSR 17-20-007

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-247—Filed September 21, 2017, 4:36 p.m., effective September 21, 2017, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To restrict goat hunting in the Naches Pass (3-6) and to allow holders of current goat hunting permits in the Naches Pass to obtain reissued permits.

Citation of Rules Affected by this Order: Amending WAC 220-415-130.

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

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

Reasons for this Finding: Due to recent forest fires in Eastern Washington, the United States Forest Service has closed access to most of the Naches Pass (3-6) mountain goat hunting area. This closure will likely remain in effect for most of the 2017 hunting season. By this emergency rule, the department seeks to allow holders of current mountain goat hunting permits for the Naches Pass mountain goat hunt area to hunt in 2018.

The department has specifically decided to reissue goat hunting permits for the following reasons: (1) The small geographic area in which goat hunts typically occur; (2) the likelihood that the entire Naches Pass will be legally closed to entry during the 2017 hunting season; and (3) the unlikely-

hood that holders of mountain goat special permits will have to draw a goat permit again in the future. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 21, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-415-13000A Mountain goat seasons and permit quotas. Notwithstanding the provisions of WAC 220-415-130, effective immediately, until further notice, the following rules apply:

(1) Due to the recent forest fires in Eastern Washington, the U.S Forest Service has closed access to most of the Naches Pass mountain goat hunt area (3-6, hunt #6002), and it is unlikely that the U.S. Forest Service will re-open access during the rest of the 2017 hunting season.

(2) This rule allows current holders of mountain goat hunting permits for the Naches Pass mountain goat hunting area (3-6, hunt #6002) the option to return their permits to the department, which will then re-issue these permits to the same holders for the 2018 mountain goat hunting season.

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 17-20-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-260—Filed September 21, 2017, 5:05 p.m., effective September 21, 2017, 5:05 p.m.]

Effective Date of Rule: Immediately upon filing.

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 relation-

ship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: This action rescinds [rescinds] [the] fishery scheduled for 8:00 p.m., September 21, 2017, and continues the 2017 fall season for nontreaty Columbia River commercial fisheries. The select area fisheries were set at a previous compact hearing. The preseason forecast for the Columbia River return of fall Chinook is six hundred thirteen thousand eight hundred fish and harvest estimates are behind preseason expectations to date. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. 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 August 16, 2017, and July 27, 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 rap-

idly, 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 the Request of a Non-governmental 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: September 21, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-358-03000J Columbia River seasons below Bonneville Dam. 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) Deep River Select Area.

(a) **Season:** Monday, Tuesday, Wednesday, Thursday and Friday nights through September 23, 2017.

Monday, Tuesday, Wednesday, and Thursday nights September 25-October 13, 2017
Open hours are 6 PM to 9 AM.

(b) **Area:** The Deep River Select Area. All waters from West Deep River Road bridge at the town of Deep River, downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel (WAC 220-20-015(1)).

(2) Tongue Point/South Channel

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights through October 27, 2017

Open Hours: 4 PM-10 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, northwesterly to the eastern tip of Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets. 6-inch maximum mesh size. Maximum net length of 250 fathoms. In the Tongue Point fishing area: weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel. In the South Channel fishing area: 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.

(3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights through October 27, 2017

Open Hours: 6 PM-10 AM

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 1/2-mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. The area within a 100-foot radius of the mouth of Big Creek is closed.

(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) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-358-010.

(b) **ALLOWABLE POSSESSION:** Chinook, coho, pink and sockeye salmon, white sturgeon and shad. A maximum of three 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 three white sturgeon possession and sales limit includes all Select Area fisheries.

(c) Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the

net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-180).

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000I Columbia River seasons below Bonneville. (17-252)

WSR 17-20-011 EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 22, 2017, 11:11 a.m., effective September 22, 2017, 11:11 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-827-0105 Who is eligible for a state supplementary payment? and 388-827-0120 May DDA deny, reduce, or terminate a state supplementary payment?, to clarify language from recent amendments that may be interpreted in a way that limits a person's eligibility for state supplementary payments (SSP). These emergency rules clarify and correct the ambiguous language that may limit SSP eligibility.

Citation of Rules Affected by this Order: Amending WAC 388-827-0105 and 388-827-0120.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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: If the developmental disabilities administration does not enact these emergency rules, some clients who received SSP before June 2017 may be at risk of losing their SSP funds, which is a benefit available to supplemental security income recipients. These rules are necessary to preserve the public health, safety, or general welfare of SSP clients who may rely on SSP funds.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 15, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-13-022, filed 6/12/17, effective 7/13/17)

WAC 388-827-0105 Who is eligible for a state supplementary payment? (1) The developmental disabilities administration (DDA) must not enroll you in state supplementary payments after the effective date of this section, unless you are eligible for a state supplementary payment for prevocational legacy.

(2) To be eligible for a state supplementary payment, you must meet all general eligibility requirements under subsection (3) of this section and any applicable program-specific requirements under subsections (4) through (8) of this section.

(3) To be eligible for a state supplementary payment, you must:

(a) Be determined DDA eligible under chapter 388-823 WAC;

(b) Complete an in-person interview and reassessment with DDA once every twelve months—or more often if DDA deems it necessary—to determine whether you continue to meet eligibility requirements; and

(c) Be financially eligible because:

(i) You receive supplementary security income cash assistance for the month in which the state supplementary payment is issued; or

(ii) You receive social security Title II benefits as a disabled adult child ~~((, your SSI was terminated due to the receipt of these benefits;))~~ and you would be eligible for SSI if you did not receive these benefits.

(4) To be eligible for children's legacy care state supplementary payments, you must live with your family as defined in WAC 388-832-0001.

(5) To be eligible for a state supplementary payment for waiver services, you must be enrolled in a home and community based services waiver program as described in chapter 388-845 WAC.

(6) To be eligible for prevocational legacy state supplementary payments, you must:

(a) Have left prevocational services on or after September 1, 2015; and

(b) Not be enrolled in a DDA residential habilitative service.

(7) To be eligible for residential habilitation state supplementary payments, you must be receiving a residential habilitation service as described in chapter 388-845 WAC and as identified in your person-centered service plan.

(8) To be eligible for state supplementary payments in lieu of individual and family services you must be:

- (a) At least three years old; and
- (b) Living with your family as defined in WAC 388-832-0001.

AMENDATORY SECTION (Amending WSR 17-13-022, filed 6/12/17, effective 7/13/17)

WAC 388-827-0120 May DDA deny, reduce, or terminate a state supplementary payment? (1) The developmental disabilities administration (DDA) may deny, reduce, or terminate a state supplementary payment if one or more of the following is true:

- (a) You do not meet the eligibility requirements under WAC 388-827-0105;
 - (b) You do not cooperate with DDA during:
 - (i) Service planning; or
 - (ii) Required quality assurance and program monitoring activities;
 - (c) You choose to unenroll from state supplementary payments.
- (2) Except for state supplementary payments for pre-vocational legacy and state supplementary payments for waiver services, DDA will terminate your state supplementary payment if you enroll in a DDA-administered home and community based services waiver.
- (3) State supplementary payments are limited to available funding.
- (4) DDA will terminate your state supplementary payments for pre-vocational legacy if you enter into a DDA pre-vocational service or a DDA residential habilitation service.

WSR 17-20-012

EMERGENCY RULES

THE EVERGREEN STATE COLLEGE

[Filed September 22, 2017, 12:13 p.m., effective September 22, 2017, 12:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This filing establishes rules governing the use of designated public forums on the college campus, preserving the rights to engage in expressive activities while ensuring safety and fulfillment of the college's educational mission.

Statutory Authority for Adoption: RCW 28B.40.120.

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: Immediate adoption of these rules is necessary for the preservation of the public health, safety, and general welfare on The Evergreen State College campus and observing the time requirements of notice and opportunity to comment on adoption of a permanent rule would be contrary to public interest. Campuses throughout the nation have experienced unrest, violence and other unlawful acts that detract from the educational missions of these entities and harm individuals and the campus commu-

nity as a whole. Last spring, several outside organizations converged on Evergreen's campus. Information about potential safety concerns and possible violence prompted the hiring of the Washington state patrol to manage safety and security during the event. This required significant expenditure of scarce college resources to protect against potential violence from entities with no connection to the college. Since that time UC Berkeley experienced violence when these same organizations were on their campus. University of Virginia, Georgia Tech, and other educational institutions have also experienced violence. The adoption of these rules are necessary to enable the college to foster free exchange of ideas subject to the reasonable time, place, and manner restrictions set out in this rule, while ensuring the health, safety and welfare of individuals on campus.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, 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: September 22, 2017.

John Carmichael
Rules Coordinator

[NEW SECTION]

WAC 174-136-044 Use of college facilities for expressive activities The Evergreen State College is an educational institution established and maintained by the people of Washington state to carry out the mission of teaching, research and public service. College facilities exist for the primary purpose of supporting that mission and related educational activities.

The college may also permit the use of facilities for other purposes so long as the use does not interfere with college activities. In such cases, the college may impose reasonable conditions on the time, place and manner in which facilities are used.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 174-136-045 Definitions (1) "Facility" or "facilities" includes all buildings and grounds owned or controlled by the college and the streets, sidewalks, plazas, parking lots, and roadways within the boundaries of property owned or controlled by the college. Specific rules also apply to parking lots 174-116 WAC.

(2) "First amendment activities" include, but are not necessarily limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speechmaking, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspectives, or viewpoints.

(3) "Non-college groups" are groups that are neither a college group nor a college affiliate. Non-college groups include employee union organizations, businesses, nonprofit organizations, government agencies, and individuals who are not currently enrolled students, current college employees, or employees of a college affiliate.

(4) "College affiliates" are external entities that have formal relationships with the college, including: The Evergreen State College Foundation. College affiliates also includes the officers, agents, and employees of such an entity.

(5) "College groups" include: student governments and student groups that are officially recognized by the college and any other group that is formally recognized by the college as a group that is directly associated with and a part of the college organization. College group also includes individual members of these groups when acting on behalf of the group, as well as currently enrolled students and current employees.

(6) "Use of facilities" includes the holding of any event or forum, the posting of signs, all forms of advertising, commercial solicitation or the conduct of other commercial activities, the distribution of pamphlets or similar written materials, and the charitable solicitation or the conduct of other charitable activities on or using college facilities.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 174-136-046 College priority First priority for the use of campus facilities shall be given to regularly scheduled college activities. Additionally, use of college facilities may be subject to reasonable time, place, and manner restrictions that take into account, among other considerations, the general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods, and the general public. In reviewing conflicting requests to use college facilities, primary consideration is given to activities specifically related to the college's mission.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 174-136-047 Access to campus facilities (1) Faculty and staff of the college and college affiliates may use campus facilities in the course of advancing the college mission and must follow applicable college policies when doing so.

(2) College groups, such as registered student organizations, may reserve and use campus facilities, and must follow applicable college policies when doing so.

(3) Invited guests of faculty, staff, and registered student organizations may use college facilities, provided that the sponsoring employee or organization ensures that all applicable college policies are followed.

(4) Non-college groups may use college facilities only by:

(a) Renting space and obtaining services through the college's office of conference services under the terms and conditions established by that office; or

(b) Using the campus designated public forum areas under the conditions described in 174-136-048.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 174-136-048 Use of campus designated public forum (1) Purpose. Freedom of expression is a highly valued and indispensable quality of college life. The college commitment to this ideal does not, however, grant to individuals or groups an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's buildings, facilities and grounds are dedicated. The purpose of these time, place, and manner regulations is to establish procedures and reasonable controls for the use of the college's public forum areas. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of individuals or groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression.

(2) Policy. Subject to all other applicable regulations and requirements of this chapter, individuals and/or groups may use the college's designated public forum areas for those activities protected by the first amendment.

(3) Conflict with college events. The college's public forum areas may not be used on the same date as any previously scheduled college event or activity at the site. Campus public forums may not be used for first amendment activities by non-college groups during new student orientation, week ten of an academic quarter, or commencement.

(4) Designated public forum area. The college designates the following public forum areas are:

(a) The bricked areas of Red Square;

(b) The public sidewalks adjacent to public roads.

(5) Duration of use.

(a) Non-college groups may use public forum areas for not more than five hours per day and for no more than three days during any three-week period.

(b) These limitations upon the duration of use will be excused, on a day-to-day basis, upon request when there are no competing requests to use the area and when the use will not conflict or interfere with activities scheduled within the immediate vicinity of the public forum area.

(6) Utility connections. The college will not provide utility connections, including power, telephone, and data.

(7) Grant of license. The college president or designee, or any college vice president or designee may authorize first amendment activities which are reasonably determined not to disrupt college activities, despite a literal violation of this policy statement. Such determinations will be made without consideration of the content or message of the first amendment activities.

(8) Termination of license. The college president or designee, or any college vice president or designee may, at any time, terminate, cancel or prohibit the use of facilities if the event is disrupting normal college functions. Any of these individuals may refuse to allow a proposed use of facilities if they determine, after reasonable inquiry, that the use or event cannot be conducted without disrupting normal college functions. Such determinations will be made without consideration of the content or message of the first amendment activities.

(9) Procedures - Notice for use of designated public forum area. Non-college groups who desire to use a public forum area for those activities protected by the first amendment in which more than fifty people are expected to participate, must provide notice to the college. Notice shall be provided to the office of college relations no later than fifteen business days in advance of use of the public forum area. However, events may be permitted with less notice so long as the event does not interfere with any other function. The notice to use a public forum area must contain:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the event or use (hereinafter "the sponsoring organization"); and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

(c) The date, time, and requested location of the event; and

(d) The nature and purpose of the event; and

(e) The estimated number of people expected to participate in the event.

(f) Certification that the non-college group is not prohibited from using college facilities by 174-136-049(3) WAC.

(g) If more than 75 people are expected to participate in the event, the office of college relations may require a completed Event Sponsor Assessment and Planning Worksheet.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 174-136-049 Conditions of use. (1) No disruption to normal activities. College facilities may not be used in ways which obstruct or disrupt college operations, the freedom of movement, or any other lawful activities. No activity may obstruct entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people and vehicles.

(2) Sound amplification. Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs. Use of sound amplification equipment must comply with all local ordinances.

(3) Prohibited users. The college will not make its facilities or services available to organizations which do not assure the college that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. secs. 12132 and 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

The college will not make its facilities or services available to organizations which do not assure the college that they do not discriminate against any person because of race, color, religion, creed, national origin, sex, sexual orientation, gender identity, gender expression, marital status, age, disability, pregnancy or status as a disabled veteran, a Vietnam era veteran or other covered veteran, except where the organizations have been exempted from provisions of applicable state or federal laws or regulations.

(6) Demands on college resources. College facilities may not be used where the use would create undue stress on college resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.); except that the use of public forum areas for a first amendment activity may not be halted simply because the event may require additional college security or police costs.

(7) Prohibited items and authority to inspect. Within the limits of applicable laws, the college is committed to establishing and maintaining safe conditions for persons attending events in college facilities. Accordingly, some events have restrictions on items that may be brought into the event (i.e., beverage containers, noisemakers). Individuals possessing such items will not be admitted to, or will be removed from, college facilities until the items have been properly removed, discarded, or stored. All persons entering events at college facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(8) Violations and trespass. Individuals who violate the college's use of facilities rules and approved users who violate college contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave college property or be refused future use of college facilities.

The college president, or designee, may prohibit access to college facilities, give notice against trespass, and/or order any person or group to leave college facilities.

Failure to comply with a request to leave college property could subject the individuals to arrest and criminal prosecution under applicable state, county, and city laws.

(9) Safety and liability.

(a) Users must comply with all applicable college policies, procedures, rules and regulations; local, state and federal laws; and fire, health and safety regulations, to include any special regulations specified for the event by the college and/or government authorities.

(b) Users assume full responsibility for any loss, damage or claims arising out of the use. To address foreseeable risks, hazards and dangers to public health or safety posed by an activity, or the use or erection of he displays or other materi-

als on the College campus, the College may require expressive activity users to provide insurance and/or indemnification sufficient to protect the College, its community and the public from property damage, death or personal injury.

(c) College facilities may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, or invitees.

(d) College facilities may not be used in any manner that creates a hazard or results in damage to college facilities.

(e) Users shall complete the Event Sponsor Assessment & Planning Worksheet as required or directed by Office of College Relations, the Office of Conference Services, or the Student Activities Office.

(f) College facilities may not be used in furtherance of or in connection with illegal activity.

(g) Users are responsible for the appropriate care of facilities being used. Facilities may be inspected by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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.

[NEW SECTION]

WAC 174-136-050 Authorized and prohibited uses.

(1) Private or commercial activities.

(a) College facilities may not be used for private or commercial gain, including: Commercial advertising; solicitation and merchandising of any food, goods, wares, service, or merchandise of any nature whatsoever; or any other form of sales or promotional activity; except as allowed by a college Vice President or in the following cases:

(i) By special permission granted by the college president, or designee, if an agreement, lease, or other formal arrangement is entered into between the college and the person, corporation, or other entity desiring to engage in commercial activity; or

(ii) To the extent it represents the regular advertising, promotional, or sponsorship activities carried on, by, or in any college media or at college events;

(b) College facilities may not be used by faculty or staff in connection with compensated outside service, except that faculty or staff may use college facilities that are generally available to the public on the same basis, including payment of the same fees, as may other private persons.

(c) Commercial advertising and/or solicitation which is deceptive or concerns an illegal product or service is prohibited on college facilities.

(3) Political activities. College facilities may be used for political activities when such use complies with chapter 42.52 RCW, Ethics in public service. Permitted activities may include:

(a) College departments, student government organizations, or registered student organizations may sponsor candi-

date forums as well as issue forums regarding ballot propositions;

(b) Candidates for office and proponents or opponents of ballot propositions may rent college facilities on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups;

(c) Candidates for office and proponents or opponents of ballot propositions may use public forum areas, to the same extent and on the same basis as may other individuals or groups; and

(d) A registered student organization may invite a candidate or another political speaker to one of the meetings of its membership on college property, if it has complied with the scheduling procedures

(e) Restrictions:

(i) When an event under this section involves the rental of a college facility, the full rental cost of the facility must be paid and state funds may not be used to pay rental costs or any other costs associated with the event.

(ii) College facilities may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(iii) All candidates who have filed for office for a given position, regardless of party affiliation, must be given equal access to the use of facilities within a reasonable time.

(iv) No person shall solicit contributions on college property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(v) Except for the use of a campus designated public forum as described in 174-136-048 WAC, use of college facilities for political activities, as described in this section, must have prior approval of the vice president for finance and administration or designee.

(4) Charitable organization use. College facilities may be used to benefit a charitable organization when such use complies with chapter 42.52 RCW, Ethics in public service. Examples of permitted use include, but are not limited to, the following:

(a) Charities that are licensed in the state of Washington may use college facilities that are generally available to the public on the same basis, including payment of the same fees, as may private citizens;

(b) Charities that are licensed in the state of Washington may use facilities without charge by special permission granted by the college president, or designee, or the vice president for finance and administration where the college has determined that the charitable activity or use will serve an educational or public service purpose related to the college's mission; and

(c) Student government organizations, registered student organizations, and college units that have followed college policies and procedures to conduct fund-raising activities and have adhered to all scheduling requirements and other college policies.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 17-20-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-256—Filed September 22, 2017, 2:34 p.m., effective October 2, 2017]

Effective Date of Rule: October 2, 2017.

Purpose: Amends the rules for commercial sea urchin season.

Citation of Rules Affected by this Order: Amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule is needed to open the commercial sea urchin season because harvestable surpluses of sea urchin exist in the districts specified. 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 the Request of a Non-governmental 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: September 22, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-340-75000A Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective October 2, 2017, until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3, and District 4. This excludes the closed area between Districts 3 and 4, specifically the area between a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude and a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches

or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3, District 4, District 6, and District 7. This excludes the closed area between Districts 3 and 4, specifically the area between a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude and a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. Also excluded are all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red and green sea urchins for each weekly fishery opening period is 2,000 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

WSR 17-20-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-259—Filed September 25, 2017, 9:20 a.m., effective September 25, 2017, 9:20 a.m.]

Effective Date of Rule: Immediately upon filing.

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 220-359-02000H; 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: This order continues the fall 2017 treaty commercial gillnet fishery and allows the sale of

fish caught in Zone 6. The platform and hook and line fisheries were set at a previous compact hearing. The expectation for treaty fisheries to be within the preseason ESA guidelines continues to be unchanged. 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 forecast for upriver fall Chinook is four hundred eighty-four thousand one hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with actions of the Columbia River compacts on September 6, 2017, August 16, 2017, and July 27, 2017. This action 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 the Request of a Non-governmental 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: September 22, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-359-02000I 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 September 25 to 6:00 PM September 29, 2017
 - (b) Gear: Set nets and drift gillnets. 8-inch minimum mesh restriction.
 - (d) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes.
 - (e) Standard river mouth and dam sanctuaries are in place, including the Spring Creek Hatchery sanctuary.
- (2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - (a) Season: Immediately through October 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. Live release of all oversize and under-size sturgeon is required.
 - (d) All sanctuaries for these gear types are in effect.
- (3) Columbia River Tributaries upstream of Bonneville Dam:
 - (a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.
 - (b) Area: Drano Lake, 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 Bonne-

ville 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 October 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. September 25, 2017:

WAC 220-359-02000H Columbia River salmon seasons above Bonneville Dam. (17-251)

WSR 17-20-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-262—Filed September 26, 2017, 2:56 p.m., effective September 30, 2017, 6:00 p.m.]

Effective Date of Rule: September 30, 2017, 6:00 p.m.

Purpose: Amend commercial shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000L and 220-340-52000M; and amending WAC 220-340-520.

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 2017 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes the shrimp trawl fishery in Shrimp Management Area 3; and (2) closes the remaining shrimp pot and trawl fisheries in all areas for the 2017 season on October 16. 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 the Request of a Non-governmental 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: September 26, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-52000M Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 2W and 3 are open to the harvest of all shrimp species except spot shrimp, effective immediately until further notice, except as provided for in this section:

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

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

(2) Shrimp trawl gear:

(a) That portion of Catch Area 22A within SMA 1B is open.

(b) That portion of Catch Area 20B within SMA 1B is open.

(c) That portion of Catch Area 21A within SMA 1B is open.

(d) Catch Area 20A is open.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. September 30, 2017:

WAC 220-340-52000L Puget Sound shrimp pot and beam trawl fishery—Season. (17-243)

The following section of the Washington Administrative Code is repealed effective October 16, 2017:

WAC 220-340-52000M Puget Sound shrimp pot and beam trawl fishery—Season.

WSR 17-20-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-261—Filed September 26, 2017, 2:58 p.m., effective October 1, 2017, 8:00 a.m.]

Effective Date of Rule: October 1, 2017, 8:00 a.m.

Purpose: Amend Puget Sound commercial crab fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-340-420, 220-340-455, and 220-352-180.

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

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

Reasons for this Finding: The provisions of this rule will reopen the commercial crab harvest areas in Puget Sound. There is sufficient allocation available in all of the commercial regions to accommodate this opening. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: September 26, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-42000E Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420:

(1) It is permissible to deploy Dungeness crab pots for commercial purposes starting at 8:00 a.m. October 1, 2017 until 7:00 p.m. October 2, 2017, in Region 1, Region 3-1 and Region 3-3 from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and prior notice has been given as provided below. Crab pots may only be deployed during daylight hours.

(2) Barging is not allowed in Region 2 East, Region 2 West and Region 3-2. This includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-E, 25B, 25D, 26A-W, 23D, 25A and 25E.

(3) The licensed owner must leave a telephone message at the Mill Creek annex office, (425) 775-1311 ext. 126, or send an email to crabreport@dfw.wa.gov, detailing the following information:

(a) Name and license number of licensed owner.

(b) Name of designated primary operator if different from licensed owner.

(c) Name of alternate operator if used to deploy pots from a non-designated vessel.

(d) Buoy brand number and number of pots to be deployed from a non-designated vessel.

(e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(4) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(5) Effective 8:00 a.m. October 1, 2017, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 2 East, Region 2 West, Region 3-1, Region 3-2, Region 3-3 East or Region 3-3 West. These regions include Marine Fish-Shell-

fish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 24A, 24B, 24C, 24D, 25B, 25D, 26A East, 26A West and 29.

(6) All remaining buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

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.

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.

NEW SECTION

WAC 220-340-45500C Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455:

(1) Effective 8:00 a.m. October 1, 2017, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) Effective 8:00 a.m. October 1, 2017, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(3) Effective 8:00 a.m. October 1, 2017, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(b) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(c) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines

projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(4) Effective 8:00 a.m. October 1, 2017, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

NEW SECTION

WAC 220-352-18000B Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-352-180, effective 8:00 am, October 1, 2017, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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 17-20-026

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-263—Filed September 27, 2017, 7:41 a.m., effective September 27, 2017, 7:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of these emergency rule actions is to create a new Elk Area that would facilitate directing hunting pressure in a specific location and to incorporate that new Elk Area into the existing hunting season structure. Both of these emergency rule actions will help mitigate agricultural damage caused by elk.

Citation of Rules Affected by this Order: WAC 220-415-040 and 220-415-060.

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

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

Reasons for this Finding: Agricultural damage by elk can be a very dynamic, site-specific development. Occasionally, the department has to adapt to changing circumstances in order to meet the mandate in statute that requires agricultural damage caused by elk to be addressed. Emerging conditions in the Cloverland area require creating new areas where existing hunting season structures can be directed.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, 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: September 27, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-415-04000A Elk area descriptions Notwithstanding the provisions of WAC 220-415-040, effective immediately, until further notice, add the following Elk Area description:

Elk Area 1075 (Asotin Co): Private Land (Excluding WDFW Lands) within GMU 175 within the following area: From the intersection of the South Fork Asotin Creek Road and Campbell Grade Road, continuing south until the South Fork Asotin Creek Road crosses the South Fork of Asotin Creek. South along the South Fork of Asotin Creek until it intersects with the USFS property line, due south along the USFS boundary until it reaches the Cloverland Road. NE along the Cloverland Road to the intersection of the Back Road, north along the Back Road to Campbell Grade Road, West on Campbell Grade Road to the intersection with South Fork Asotin Creek Road and the to the point of beginning.

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

NEW SECTION

WAC 220-415-06000A Elk special permits Notwithstanding the provisions of WAC 220-415-060, effective immediately, until further notice, add Elk Area 1075 to the boundary of the following elk special permit hunt:

Antlerless Elk

Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Couse	EM	Any	Dec. 1-31	Antlerless	Elk Areas <u>1075</u> , 1081	35

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 17-20-028
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed September 27, 2017, 11:07 a.m., effective September 27, 2017, 11:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule creates a temporary limited category 03 license for individuals that is restricted to work performed on hand powered manlifts in grain terminals. An initial emergency rule (WSR 17-12-022) and CR-101 Preproposal statement of inquiry (WSR 17-12-023) were filed on May 30, 2017. This rule making renews the emergency rule while the permanent rule-making process continues.

Citation of Rules Affected by this Order: New WAC 296-96-00911.

Statutory Authority for Adoption: Chapter 70.87 RCW, Elevators, lifting devices, and moving walks.

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: In Washington, all conveyances other than residential units must be inspected and tested at least once each year. Because of our statewide construction boom, there are more conveyances than ever in our state. But, there aren't enough licensed elevator mechanics to do inspection and testing.

While there are gaps between the number of conveyances and the number of licensed mechanics, this "service gap" is especially acute in the grain industry.

Grain terminals often have hand powered manlifts, which are simple to operate. Even so, these manlifts must be inspected and tested at least once per year. The inspection gap causes work stoppages, increased costs for farmers, and risks to those who work around the manlifts, particularly during the busy harvest season in the summer and fall.

Statewide, there are only three licensed elevator mechanics who hold a current category 03 license, and only two service providers, who can work on all kinds of electric, belt, and hand powered manlifts and special purpose elevators.

We estimate there are about three hundred fifty hand powered manlifts statewide that use only manual energy to operate and don't present the same sorts of risks that electric and belt manlifts and special purpose elevators do. However, our current rules require that hand powered manlifts be inspected and tested by either service providers that hold a full category 03 license, or those who hold a temporary category 09 license. To get a temporary license, the applicant must have finished seventy-five percent of education and training.

The elevator program has learned from stakeholders that there are three individuals who have finished fifty percent of the education and training to qualify for a full category 03 license. Finding a way to license them to inspect only hand powered manlifts could potentially address the inspection gap during the upcoming harvest season in the grain industry.

Stakeholders from the grain industry have asked the elevator program to create a temporary limited category 03 license, restricted to limited duties as an elevator mechanic to perform maintenance, testing, and repair of hand powered manlifts in grain terminals. This license excludes any type of electrical work.

The elevator program has created an emergency rule creating this temporary limited category 03 license to address the inspection gap in the grain industry for the upcoming harvest season.

To qualify for this temporary limited category 03 license for hand powered manlifts in grain terminals, individuals must meet the qualifications specified in the emergency rule. Elevator contractors must be able to demonstrate a backlog or need for the temporary limited license. The department will issue the temporary limited license based upon a contractor's ability to attest to a shortage of qualified elevator mechanics in these specific areas of the elevator industry: Maintenance, repair, installation or testing.

The temporary limited license for hand powered manlifts in grain terminals is valid for thirty days. It may be issued six times and renewed consecutively for a six-month period. An individual holding the license must be employed and designated as competent by a licensed elevator contractor and must be actively pursuing education and training to become a fully licensed category 03 elevator mechanic. The elevator contractor must be able to attest to a backlog or need for the temporary limited license for hand powered manlifts in the following areas: Maintenance, repair, installation, and testing of conveyances. The department will determine whether to issue the temporary limited category 03 license for hand powered manlifts based upon a demonstrated shortage of qualified elevator mechanics in these specific areas of the elevator industry.

The department has initiated the permanent rule-making process and is working with stakeholders to develop the permanent rule.

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

Number of Sections Adopted at the Request of a Non-governmental 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 1, 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 1, Amended 0, Repealed 0.

Date Adopted: September 27, 2017.

Joel Sacks
Director

NEW SECTION

WAC 296-96-00911 Temporary limited category 03 license for hand powered manlifts in grain terminals. (1)

The department may issue a temporary limited category 03 license allowing the holder to perform limited duties as an elevator mechanic to do maintenance, testing, and repair of hand powered manlifts in grain terminals.

(2) A temporary limited category 03 license allows the individual to do maintenance, testing, and repair of hand powered manlifts in grain terminals as designated on the license.

(3) A temporary limited category 03 license for hand powered manlifts in grain terminals is issued when:

(a) The individual is employed by a licensed elevator contractor;

(b) The individual is designated as competent by a licensed elevator contractor;

(c) The individual has not yet qualified for a temporary category 09 license, has completed at least 50 percent of the training and education toward a category 03 license, and is actively pursuing education to qualify for a temporary category 03 license;

(d) The department determines there is a shortage of qualified elevator mechanics in this specific area of the elevator industry.

(4) An individual holding a temporary limited category 03 license for hand powered manlifts in grain terminals must demonstrate ongoing education and training in an effort toward meeting the requirements for a full category 03 license for the license to be renewed.

(5) A temporary limited category 03 license for hand powered manlifts in grain terminals may be renewed not more than six times in a consecutive six-month period.

(6) An elevator contractor must attest to an existing backlog in one or all of the following areas to support the need for the temporary category 03 license for hand powered

manlifts in grain terminals: Maintenance, repair, installation or testing of conveyances.

**WSR 17-20-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-268—Filed September 28, 2017, 2:09 p.m., effective September 28, 2017, 2:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of these emergency rule actions is to create a new Elk Area that would facilitate directing hunting pressure in a specific location and to incorporate that new Elk Area into the existing hunting season structure. Both of these emergency rule actions will help mitigate agricultural damage caused by elk.

Citation of Rules Affected by this Order: Repealing WAC 220-415-06000A; and amending WAC 220-415-060.

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

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

Reasons for this Finding: Agricultural damage by elk can be a very dynamic, site-specific development. Occasionally, the department has to adapt to changing circumstances in order to meet the mandate in statute that requires agricultural damage caused by elk to be addressed. Emerging conditions in the Cloverland area require creating new areas where existing hunting season structures can be directed. This emergency rule also corrects an error in filing of WSR 17-20-026. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, 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: September 28, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-415-06000B Elk special permits Notwithstanding the provisions of WAC 220-415-060, effective immediately, until further notice, add Elk Area 1075 to the boundary and change the close date to January 20, 2018 for the following elk special permit hunt:

Antlerless Elk

Hunt Name	Weapon/Tag	Hunters	Hunt Dates	Special Restrictions	Boundary	Permits
Couse	EM	Any	Dec. 1 - Jan. 20, 2018	Antlerless	Elk Areas 1075, 1081	35

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-415-06000A Elk special permits. (17-263)

**WSR 17-20-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-265—Filed September 28, 2017, 4:08 p.m., effective October 2, 2017, 6:00 a.m.]

Effective Date of Rule: October 2, 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 220-359-02000I; 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: This order continues the fall 2017 treaty commercial gillnet fishery and allows the sale of fish caught in Zone 6. The platform and hook and line fisheries were set at a previous compact hearing. The expectation for treaty fisheries to be within the preseason ESA guidelines continues to be unchanged. 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 forecast for upriver fall Chinook is four hundred eighty-four thousand one hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with actions of the Columbia River compacts on September 6, 2017, August 16, 2017, and July 27, 2017. This action 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 the Request of a Non-governmental 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: September 28, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-359-02000J 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 AM Monday October 2 to 6 PM Thursday October 5
 - (b) Gear: Set nets and drift gillnets. 8-inch minimum mesh restriction.
 - (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes.
 - (d) Standard river mouth and dam sanctuaries are in place, including the Spring Creek Hatchery sanctuary.
 - (2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - (a) Season: Immediately through October 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. Live release of all oversize and under-size sturgeon is required.
 - (d) All sanctuaries for these gear types are in effect.
- (3) Columbia River Tributaries upstream of Bonneville Dam:
 - (a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal sub-

sistence fishery regulations for enrolled Yakama Nation members.

(b) Area: 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 October 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. October 2, 2017:

WAC 220-359-02000I Columbia River salmon seasons above Bonneville Dam. (17-259)

WSR 17-20-045 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-266—Filed September 28, 2017, 4:09 p.m., effective October 1, 2017, 12:01 a.m.]

Effective Date of Rule: October 1, 2017, 12:01 a.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 Rules Affected by this Order: Repealing WAC 220-358-03000J; and amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: This action continues the 2017 fall season for nontreaty Columbia River commercial fisheries. The select area fisheries were set at a previous compact hearing. The preseason forecast for the Columbia River return of fall Chinook is six hundred thirteen thousand eight hundred fish and harvest estimates are behind preseason expectations to date. Harvest estimates for the seasons are well within ESA limits and sharing guidelines. Commercial harvest of white sturgeon at this time is estimated to be at ninety-six percent of the preseason harvest guideline of one thousand two hundred forty-five fish and likely to reach one hundred percent by the time prohibition of possession and sale begins. 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 August 16, 2017, and July 27, 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 the Request of a Non-governmental 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: September 28, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-358-03000K Columbia River seasons below Bonneville Dam. 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) Deep River Select Area.

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights until October 13, 2017

Open hours are 6 PM to 9 AM.

(b) **Area:** The Deep River Select Area. All waters from West Deep River Road bridge at the town of Deep River, downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington

shore. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

(c) **Gear:** Gillnets. Maximum mesh size restriction is 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel (WAC 220-354-010(1)).

(2) Tongue Point/South Channel

(a) **Season:** Monday, Tuesday, Wednesday, and Thursday nights through October 27, 2017

Open Hours: 4 PM-10 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, northwesterly to the eastern tip of Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets. 6-inch maximum mesh size. Maximum net length of 250 fathoms. In the Tongue Point fishing area: weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel. In the South Channel fishing area: 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.

(3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights through October 27, 2017

Open Hours: 6 PM-10 AM

(b) **Area:** Blind Slough and Knappa Slough areas are both open. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 1/2-mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. The area within a 100-foot radius of the mouth of Big Creek is closed.

(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) Additional requirements for all Select Area commercial fisheries:

(a) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-358-010.

(b) ALLOWABLE POSSESSION: Chinook, coho, pink and sockeye salmon, shad and white sturgeon. A maximum of three 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 three white sturgeon possession and sales limit includes all Select Area fisheries. Effective at 12:01 a.m. October 1, 2017, the possession and sale of white sturgeon is prohibited. All other previously adopted rules for this fishery remain in effect.

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

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-180).

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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000J Columbia River seasons below Bonneville. (17-260)

**WSR 17-20-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-255—Filed September 28, 2017, 4:09 p.m., effective September 28, 2017, 4:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends freshwater fishing rules for the Copalis River.

Citation of 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: 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 the Request of a Non-governmental 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: September 28, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000L Freshwater exception to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective October 1, 2017, until further notice, it is permissible to fish for salmon in those waters of the Copalis River from the mouth to Carlisle Bridge. Daily limit of 6 salmon; up to 2 adults may be retained, of which only one may be a wild coho. Release Chinook salmon.

**WSR 17-20-048
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)**

[Filed September 29, 2017, 9:23 a.m., effective October 1, 2017]

Effective Date of Rule: October 1, 2017.

Purpose: The department is amending WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?, in order to implement annual adjustments to standards for the Washington basic food program.

Citation of Rules Affected by this Order: Amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, 388-470-0005, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: United States Department of Agriculture (USDA) Food and Nutrition Service Administrative Notice 17-30: SNAP - Fiscal Year 2018 Cost-of-Living Adjustments dated August 1, 2017, USDA Fiscal Year 2018 Washington SUA Approval Letter.

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

Reasons for this Finding: The department is required to use federally prescribed income eligibility standards, which are revised effective October 1 of each year, as stated in 7 C.F.R. s. 273.9.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 6, 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 the Request of a Non-governmental 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 6, Repealed 0.

Date Adopted: September 26, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-20-087, filed 10/4/16, effective 2/1/17)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) How we determine monthly allotments:

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) Maximum allotment:

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

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

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

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

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

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

(6) Minimum allotment. Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) ~~((Sixteen))~~ Fifteen dollars if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) ~~((Sixteen))~~ Fifteen dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

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

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	((157)) <u>\$160</u>
2	((157)) <u>\$160</u>
3	((157)) <u>\$160</u>
4	((168)) <u>\$170</u>
5	((197)) <u>\$199</u>
6 or more	((226)) <u>\$228</u>

- (b) Twenty percent of your AU's gross earned income (earned income deduction);
- (c) Your AU's expected monthly dependent care expense needed for an AU member to:
 - (i) Keep work, look for work, or accept work;
 - (ii) Attend training or education to prepare for employment; or
 - (iii) Meet employment and training requirements under chapter 388-444 WAC;
- (d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and
- (e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
 - (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of five hundred (~~seventeen~~) thirty-five dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~seventeen~~) thirty-five dollars.

AMENDATORY SECTION (Amending WSR 17-10-069, filed 5/3/17, effective 6/3/17)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-CAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the amounts in this subsection if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~eleven~~) twenty-one dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~eleven~~) twenty-one dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~nineteen~~) twenty-eight dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-seven dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 15-02-041, filed 1/2/15, effective 2/2/15)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

(a) "**We**" means the department of social and health services.

(b) "**You**" means a person applying for or getting benefits from the department.

(c) "**Fair market value (FMV)**" means the price at which you could reasonably sell the resource.

(d) "**Equity value**" means the FMV minus any amount you owe on the resource.

(e) "**Community property**" means a resource in the name of the husband, wife, or both.

(f) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or Basic Food when:

(a) It is a resource we must count under WAC 388-470-0045 and 388-470-0055;

(b) You own the resource. We consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that doesn't have a title; and

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, we use the equity value as the value of your resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients of cash assistance can have an additional three thousand dollars in a savings account.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for Basic Food:

(a) Three thousand ~~((two))~~ five hundred ~~((fifty))~~ dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand two hundred fifty dollars for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For Basic Food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; or

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in column B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section. The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE ~~((10/1/2016))~~ 10/1/2017

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	((1,287)) <u>\$1,307</u>	((990)) <u>\$1,005</u>	((194)) <u>\$192</u>	((1,634)) <u>\$1,659</u>
2	((1,736)) <u>1,760</u>	((1,335)) <u>1,354</u>	((357)) <u>352</u>	((2,203)) <u>2,233</u>

EFFECTIVE ((10/1/2016)) 10/1/2017

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
3	((2,184)) <u>2,213</u>	((1,680)) <u>1,702</u>	((511)) <u>504</u>	((2,772)) <u>2,808</u>
4	((2,633)) <u>2,665</u>	((2,025)) <u>2,050</u>	((649)) <u>640</u>	((3,342)) <u>3,383</u>
5	((3,081)) <u>3,118</u>	((2,370)) <u>2,399</u>	((771)) <u>760</u>	((3,911)) <u>3,958</u>
6	((3,530)) <u>3,571</u>	((2,715)) <u>2,747</u>	((925)) <u>913</u>	((4,480)) <u>4,532</u>
7	((3,980)) <u>4,024</u>	((3,061)) <u>3,095</u>	((1,022)) <u>1,009</u>	((5,051)) <u>5,107</u>
8	((4,430)) <u>4,477</u>	((3,408)) <u>3,444</u>	((1,169)) <u>1,153</u>	((5,623)) <u>5,682</u>
9	((4,881)) <u>4,930</u>	((3,755)) <u>3,793</u>	((1,315)) <u>1,297</u>	((6,195)) <u>6,257</u>
10	((5,332)) <u>5,383</u>	((4,102)) <u>4,142</u>	((1,461)) <u>1,441</u>	((6,767)) <u>6,832</u>
Each Additional Member	((+451)) <u>+453</u>	((+347)) <u>+349</u>	((+146)) <u>+144</u>	((+572)) <u>+575</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

requirements for teacher and principal professional certification. The rule change covers licensure requirements for second tier, but voluntarily seeking second tier remains an option.

Citation of Rules Affected by this Order: WAC 181-79A-145, 181-79A-206, 181-79A-231, 181-79A-251, 181-79A-2510, 181-85-020, and 181-85-075.

Statutory Authority for Adoption: ESSHB [E2SHB] 1341, 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: The 2017 legislature removed requirements for second tier licensure in Washington state. This law change involves numerous WAC changes to reflect the new law. The professional educator standards board filed WSR 17-13-039 [17-16-039] as an initial response on July 24, 2017, and this filing covers all the issues in the passage of HB [E2SHB] 1341.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

WSR 17-20-051

EMERGENCY RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed September 29, 2017, 10:36 a.m., effective September 29, 2017, 10:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends WAC 181-79A-145, 181-79A-206, 181-79A-231, 181-79A-251, 181-79A-2510, 181-85-020 and 181-85-075, in response to legislation that was in effect immediately July 7, 2017. HB [E2SHB] 1341 removed the

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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: September 29, 2017.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-02-027, filed 12/28/11, effective 1/28/12)

WAC 181-79A-145 Levels and validity of certificates.

Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has expired or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors and school psychologists no later than September 1, 2005.

(b) Until September 1, 2017, the first issue of a residency certificate for ~~((teachers,))~~ principals, program administrators, and educational staff associates shall be valid until the holder has completed two consecutive years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students. When the principal, program

administrator, or educational staff associate completes two consecutive years of successful service in the role in the state with the same employer, their residency certificate will be reissued with a five-year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250; provided, that residency ESA school social worker certificate holders have no residency renewal or professional certificate options and may apply for an initial ESA conversion or continuing ESA under requirements in place at time of application submission.

(c) Beginning September 1, 2017, the first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students, at which time their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must meet residency renewal requirements or earn a second-tier certificate for the role under WAC 181-79A-250. Provided, that residency ESA school social worker certificate holders have no residency renewal or professional certificate options and must apply for an initial ESA or continuing ESA certificate for the role under requirements in place at the time of application submission.

~~((e) For teachers, after September 1, 2011,)) (d) A first issue ((teacher)) residency teacher certificate remains undated until the teacher ((is eligible to register for the professional certificate assessment)) has two years of successful experience under WAC 181-79A-206, at which time the residency certificate is dated for ~~((three))~~ five years as verified by the certification office of the office of superintendent of public instruction~~((: Provided, That teachers who hold an undated initial residency certification and teach in nonpublic school settings as defined under WAC 181-79A-030 are considered to hold a valid certificate and may participate in the professional certificate requirements by submitting proof of experience under WAC 181-79A-206.~~~~

~~((d))~~ Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-251.

(e) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors and school psychologists beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associ-

ate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language, culture, and oral tribal traditions certificates: The first peoples' language, culture, and oral tribal traditions certificate will be issued beginning in January 2007. The first peoples' language, culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 12-11-100, filed 5/21/12, effective 6/21/12)

WAC 181-79A-206 Academic and experience requirements for certification—Teachers. Candidates for teachers' certificates shall complete the following requirements in addition to those set forth in WAC 181-79A-150.

(1) Initial/residency.

Candidates for the initial or residency certificate shall hold an approved baccalaureate degree from ~~((a regionally))~~ an accredited college or university pursuant to WAC 181-79A-030(5).

(2) Continuing.

(a) Candidates who apply for a continuing certificate shall have at least forty-five quarter hours (thirty semester hours) of upper division and/or graduate work completed from ~~((a regionally))~~ an accredited institution of higher education subsequent to the conferral of the baccalaureate degree: Provided, That if the individual is pursuing study in a new subject matter area or specialization, lower division (freshmen or sophomore level) credit hours in that subject area or specialization shall be accepted toward continuing certification upon completion of the requirements for an endorsement in that subject area or specialization.

(b) Candidates applying for a continuing certificate prior to September 1, 2000, shall have been granted at least two subject area endorsements.

(c) Candidates who apply for a continuing certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates for continuing teachers' certificates shall provide documentation of one hundred eighty days or full-time equivalent or more satisfactory teaching experience with an authorized employer—i.e., school district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) Professional.

(a) Candidates for the professional certificate shall have successfully completed the external portfolio of evidence assessment ~~((as directed by RCW 28A.410.220(2)))~~ adopted by the professional educator standards board. The professional certificate requires successful demonstration of the three standards (effective teaching, professional develop-

ment, and professional contributions) and twelve criteria, pursuant to WAC 181-79A-207.

(i) A candidate may submit a portfolio of evidence to the external assessment for evaluation ~~((as per RCW 28A.410.220(2)))~~ following two years of successful teaching in a state-approved public, private or state operated education program for children as defined in Title 28A RCW: Provided, the candidate was employed at least three-quarters time each year or a total of one and one-half full-time equivalent over a minimum of two years as defined in WAC 392-121-212. The portfolio assessment elements shall be determined by the professional educator standards board and include requirements for the candidates to prepare and submit a professional growth plan approved and supported by a professional growth team.

(ii) A professional growth plan identifying the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 is prepared by the candidate for a professional certificate, in collaboration with members of the professional growth team. The candidate will identify a professional growth team as defined in WAC 181-79A-030~~((++))~~ (14).

(iii) Teacher professional certificate portfolio evidence of assessment pilot participants who have not attended a program but received a "met criteria" on all entries submitted to the pilot assessment would receive the professional certificate and not be required to attend a program.

(b) Provided, individuals who hold a teaching certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirements of the professional certificate, in place of the requirements in (a) of this subsection.

(c) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates who have successfully completed the requirements for the professional certificate prior to the expiration of their residency certificate which would subject them to reinstatement according to WAC 181-79A-251 (1)(a)(iii) but failed to apply for the certificate may apply for the professional certificate. ~~((Individuals who are subject to reinstatement according to WAC 181-79A-251 (1)(a)(iii) who do not meet requirements for the professional certificate prior to the expiration of the residency certificate may apply for the professional certificate following not less than five years from the final residency expiration.))~~

AMENDATORY SECTION (Amending WSR 17-08-037, filed 3/29/17, effective 4/29/17)

WAC 181-79A-231 Limited certificates. Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educa-

tional service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for

up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting

the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet district needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators who hold or have held a regular state of Washington certificates: Provided, educational staff associates may only substitute in the role of their certificate; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d); or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for the roles of principal, teacher, school counselor, school psychologist, school speech language pathologist or audiologist and school social worker may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold a bachelor's degree and are enrolled in a state-approved preparation program for the role, if it is a role for which state-approved programs are required, in accordance with Washington requirements for certification and shall be the best qualified of the candidates for the position as verified by the employing school district: Provided, That a qualified person who holds regular certification for the requested role is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That an emergency certificate issued with a special education endorsement may be reissued once for one school year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program: Provided further, That a candidate for emergency certification as a principal holds a master's degree and has substantially completed the state-approved preparation program: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in a state-approved school psychologist preparation program, shall have completed all course work for the required master's degree, and shall be participating in the required internship: Provided further, That a candidate for emergency certification as a school speech language pathologist or audiologist shall be enrolled in a master's degree program resulting in issuance of an initial ESA certificate in

accordance with Washington requirements for certification, and may be renewed one time if the candidate has substantially completed the required master's degree program.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing ~~((or residency))~~ certificate has expired according to WAC 181-85-040 ~~((or 181-79A-251))~~ may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete ~~((the external assessment established by the professional educator standards board))~~ requirements for continuing certificate reinstatement within two years of the date the holder was issued the transitional certificate ~~((in order to continue to be employed: Provided, one year has elapsed since the final renewal expired and the teacher registers and passes the professional certificate assessment within the two years under WAC 181-79A-251))~~. The transitional certificate expiration date shall not be calculated under pro-

professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

~~((8) Provisional alternative administrative certificate.~~

~~(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.~~

~~(b) The certificate is valid for one year from date of issue.~~

~~(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.)~~

AMENDATORY SECTION (Amending WSR 16-24-029, filed 11/30/16, effective 12/31/16)

WAC 181-79A-251 Teacher residency and professional certification—Renewal and reinstatement. (1) Residency certificates shall be renewed under one of the following options:

(a) Individuals who hold, or have held, residency certificates have the following options for renewal (~~past the first three-year certificate~~):

(i) ~~((Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;~~

~~((ii)) One hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.~~

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency teacher renewal certificate or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

The professional growth plans must document formalized learning opportunities and professional development

activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers.

For educators holding multiple certificates in chapter 181-85 or 181-79A WAC, a professional growth plan for teacher, administrator or educational staff associate shall meet the requirements for all certificates held by an individual per this chapter.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency teacher renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency teacher renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.-2212.

Continuing education for teachers at the elementary and secondary levels in science, technology, engineering, and mathematics (STEM) related subjects must include a specific focus on the integration of STEM instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours with an emphasis on the integration of STEM. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(ii) Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal.

(iii) Individuals who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards. Individuals not employed as a teacher may permit their certificate to lapse until such time they register for the professional certificate assessment, or the National Board Certification(¿).

((iii)) (iv) Individuals whose three- or five-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment or assessment for National Board for Professional Teaching Standards: Provided, That teachers holding certificates expiring in 2014, 2015, or 2016 who have completed the available sections for the National Board Teacher Certificate may receive an additional two-year renewal in 2016 or 2017 to complete the assessment.

(b) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, Provided: When the first two-year residency teacher renewal (~~(on residency)~~) certificate(s) expires, teachers have three renewal options:

(i) Individuals who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(ii) Individuals who were unemployed or employed less than full-time as a teacher during the first two-year renewal may permit their certificate to lapse. Upon contracting to return to a teacher role, individuals may apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment;

(iii) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will complete and submit their scores from the assessment for National Board for Professional Teaching Standards or register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

~~((e) Individuals who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than one year following the final residency expiration: Provided, That the teacher registers and passes the Washington uniform assessment portfolio as per this section, WAC 181-79A-206 or assessment for National Board for Professional Teaching Standards within two years of issuance of the transitional certificate.~~

~~(d) Individuals who hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.)~~

(2) Teacher professional certificate.

~~(a) ((A valid)) Individuals who hold a professional teacher certificate ((issued prior to September 1, 2014,)) may ((be)) have that certificate renewed for additional five-year periods by the completion of one hundred ((fifty)) continuing education credit hours as defined in chapter 181-85 WAC or by completing four professional growth plans annually during the period in which the certificate is valid as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.~~

~~((b) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal.~~

~~(c) Renewal of the professional certificate.~~

~~((i)) Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.~~

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

(b) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

~~((i)) (c) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.~~

~~((iii)) (d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207.~~

~~((iv)) (e) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, technology, engineering, and mathematics instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science;~~

secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics. This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

~~((+))~~ (f) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.

~~((vi))~~ Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this section. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

~~((vii))~~ (g) For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

~~((viii))~~ The one time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

~~((ix))~~ (h) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.

~~((d))~~ An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

~~(e)~~ Individuals not in the role of a teacher in a public school or approved private school holding a professional teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

~~(i)~~ Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-79A-207; or

~~(ii)~~ One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

~~(iii)~~ Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal. This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

AMENDATORY SECTION (Amending WSR 16-07-103, filed 3/18/16, effective 4/18/16)

WAC 181-79A-2510 Principal and program administrator residency and professional certification—Renewal and reinstatement. (1) Principals/program administrators who hold or have held residency certificates may ~~((renew))~~ have their residency ~~((certificate in one of the following ways:~~

~~(a)~~ Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional educator standards board approved professional certificate program pursuant to WAC 181-78A-507 and 181-79A-145 may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

~~(b)~~ Individuals who hold, or have held, residency certificates who are not in the role of principal or program administrator may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education credit hours, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency) certificates renewed by completing one hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, within the previous five years from the date of the

five-year residency administrator renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

(a) Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency administrator renewal certificate; or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency administrator renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year residency administrator renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency administrator renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as

defined in WAC 181-79A-030(6) and required per RCW 28A.410.2212.

(b) A three-year renewal is available until June 30, 2020, for individuals who have held or hold a principal or program administrator residency certificate that expires prior to July 1, 2019.

(2) Professional certificate. Individuals who hold a professional certificate may ~~((be))~~ have that certificate renewed for additional five-year periods ~~((for individuals in the role as a principal, assistant principal, or program administrator in a public school or approved private school))~~ by completion of one hundred continuing education credit hours as defined in chapter 181-85 WAC or four professional growth plans developed annually since the certificate was issued, in collaboration with the professional growth team as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

(a) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(b) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of ~~((thirty))~~ twenty-five hours of continuing education credit hours.

(c) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ~~((defined in WAC 181-78A-540(1)))~~.

(d) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Certificates with a renewal date of June 30, 2019, and beyond for all principals and program administrators must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowl-

edge and competency of the teacher and principal evaluation criteria or system. This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

~~(c) ((Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.~~

~~(f)) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

~~((g) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.))~~

AMENDATORY SECTION (Amending WSR 17-11-104, filed 5/22/17, effective 6/22/17)

WAC 181-79A-2511 School counselor residency and professional certification—Renewal and reinstatement.

(1) School counselors may renew their residency certificate in one of the following ways:

(a) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the residency certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(b) An individual school counselor who completes or intends to complete a National Board of Professional Teaching Standards (NBPTS) school counselor assessment but does not earn National Board Certification may use that completed assessment, or an affidavit of intention to complete, in order to renew the residency certificate one time for two years.

(c) Individuals who hold(~~(, or have held,))~~ a residency certificate (~~(who are not in the role of school counselor))~~) may have their residency certificates renewed for an additional five-year period by the completion of (~~(fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of))~~ one hundred (~~(fifty))~~ continuing education hours

as defined in chapter 181-85 WAC, directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issuance of the residency certificate, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issue date of the latest five-year residency renewal certificate, or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410-.2212.

(d) A three-year renewal is available until June 30, 2020, for individuals who have held or hold a school counselor residency certificate that expires prior to July 1, 2019.

(e) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(2) Professional.

~~((a) For certificates issued under rules in effect prior to September 1, 2014, a valid))~~ Individuals who hold a professional certificate may ((be)) have that professional certificate renewed for additional five-year periods by:

~~((i))~~ (a) Completion of one hundred ((fifty)) continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270(4); or

~~((ii))~~ (b) Completion of four professional growth plans that are developed annually since the certificate was issued. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((b) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five year periods for individuals in the role of a school counselor by completion of four professional growth plans developed annually since the certificate was issued.~~

~~(e) Renewal of the professional certificate.~~

~~(i) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

~~((ii))~~ (c) Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

~~(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ((defined in WAC 181-78A-540(2)).~~

~~((iii))~~ as published by the professional educator standards board for administrators and educational staff associates.

(e) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.

~~((iv) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by~~

~~completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this chapter. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.~~

~~((v))~~ (f) Provided, application for certificate renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

~~(g) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

~~((vi) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.~~

~~((vii) After))~~ (h) Beginning July 1, 2015, professional certificates for school counselors, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

~~((d) Individuals not in the role of a school counselor may have their professional certificate renewed for an additional five-year period by:~~

~~(i) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or~~

~~(ii) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or~~

~~(iii) Completion of four annual professional growth plans developed since the certificate was issued.))~~

AMENDATORY SECTION (Amending WSR 15-20-059, filed 10/1/15, effective 11/1/15)

WAC 181-79A-2512 School psychologist residency and professional certification—Renewal and reinstatement. (1) School psychologists may renew their residency certificate in one of the following ways:

(a) An individual school psychologist who is applying for the National Certificate for School Psychologist (NCSP) may apply for a one-time two-year renewal with verification of NCSP submission: Provided, That individuals with expiring certificates in 2014, 2015, 2016, or 2017 may apply for a second two-year renewal with verification of NCSP submission.

(b) An individual who holds ~~((or has held,))~~ a residency certificate ~~((who is not in the role of school psychologist))~~ may have their residency certificate renewed for an additional five-year period by the completion of ~~((fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of))~~ one hundred ~~((fifty))~~ continuing education hours ~~((;))~~ as defined in chapter 181-85 WAC directly related to the current performance-based standards as defined in WAC 181-78A-270(5) from ~~((a regionally))~~ an accredited institution of higher education ~~((taken since the issuance of the residency certificate))~~ or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours directly related to the current performance-based standards as defined in WAC 181-78A-270(5) since the issue date of the latest five-year residency renewal certificate, or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal. Expired five-year residency renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previ-

ous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.-2212.

(c) School psychologists with residency certificates dated to expire June 30, 2013, 2014, 2015, 2016, or 2017, may apply until June 30, 2016, for a two-year extension. These individuals may apply for a second two-year extension until June 30, ~~((2018))~~ 2020.

(d) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(2) Professional. ~~((a))~~ For certificates issued under rules in effect prior to September 1, 2014, a valid)) Individuals who hold a professional certificate may ~~((be))~~ have that certificate renewed for additional five-year periods by:

~~((+))~~ (a) Completion of one hundred ~~((fifty))~~ continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

~~((+))~~ (b) Completion of four professional growth plans that are developed annually since the certificate was issued. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((b))~~ Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role of a school psychologist by completion of four professional growth plans developed annually since the certificate was issued.

(e) Renewal of the professional certificate.

~~((i))~~ Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

~~((+))~~ (c) Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ~~((defined in WAC 181-78A-540(2)))~~ as published by the professional educator standards board for administrators and educational staff associates.

~~((iii))~~ (e) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid nationally certified school psychologist certificate issued by the National Association of School Psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the nationally certified school psychologist certificate, whichever is greater. Such renewal is only available one time during the validity period of the nationally certified school psychologist (NCSP) certificate and cannot be the same nationally certified school psychologist certificate used to obtain the professional certificate.

(f) Provided, application for certificate renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

~~((iv))~~ Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

~~((v))~~ (g) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

~~((vi))~~ The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

~~((vii))~~ ~~After~~ (h) Beginning July 1, 2015, professional certificates for school psychologists, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

~~((d))~~ Individuals not in the role of a school psychologist may have their professional certificate renewed for an additional five-year period by:

(i) ~~Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or~~

(ii) ~~Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or~~

(iii) ~~Completion of four annual professional growth plans developed since the certificate was issued.)~~

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-85-020 Effective date and applicable certificates. The provisions of this chapter shall apply to the following certificates issued on or after August 31, 1987:

(1) ~~((Continuing))~~ Residency certificates as provided in chapter 181-79A WAC.

(2) Continuing certificates as provided in chapter 181-79A WAC.

(3) Standard certificates as provided under previous standards of the professional educator standards board.

~~((3))~~ (4) Professional certificates as provided in chapter 181-79A WAC.

~~((4))~~ (5) Provided, That applicants who have completed all requirements for a continuing or standard certificates prior to August 31, 1987, and who apply for such certificate prior to July 1, 1988, and applicants who have completed all requirements for a continuing or standard certificate except one of the three-years experience requirement prior to August 31, 1987, and who completes such requirement and applies prior to August 31, 1988, shall be exempt from the continuing education requirements of this chapter.

AMENDATORY SECTION (Amending WSR 16-23-036, filed 11/8/16, effective 12/9/16)

WAC 181-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred ~~((fifty))~~ continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certifi-

icate via annual professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred (~~(fifty)~~) hours to meet the requirements of subsection (1) of this section. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers, (~~(WAC 181-78A-540(1))~~) and as published by the professional educator standards board for administrators (~~(, or WAC 181-78A-540(2) for)~~) and educational staff associates. For educators holding multiple certificates in chapter 181-85 WAC or WAC 181-79A-251, a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section. Until June 30, 2018, each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of (~~(thirty)~~) twenty-five continuing education credit hours.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(3) Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a continuing school psychologist certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by the National Association of School Psychologists in lieu of the completion of the continuing education credit hours required by this chapter.

(5) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and/or engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan with an emphasis on the integration of science, technology, engineering, and mathematics. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(6) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional

development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers, principals, program administrators, and superintendents with continuing certificates must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system. This requirement is considered to be met by holders of a valid National Board Certificate issued by the NBPTS.

WSR 17-20-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-271—Filed September 29, 2017, 2:08 p.m., effective October 1, 2017]

Effective Date of Rule: October 1, 2017.

Purpose: To repeal WAC 220-500-03000A, 220-500-11000A, and 220-500-04000A.

Citation of Rules Affected by this Order: Repealing WAC 220-500-03000A, 220-500-11000A, and 220-500-04000A.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.32.470.

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 recent changes in weather with forecasting precipitation, lower temperatures and higher humidity levels, have abated high fire hazard conditions for the foreseeable future.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, 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: September 29, 2017.

J. W. Unsworth
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-500-03000A Operating chainsaws, welding, or operating an acetylene or other torch with open flame.
- WAC 220-500-11000A Fires, campfires and smoking.
- WAC 220-500-04000A Operating a motor vehicle off developed roadways.

WSR 17-20-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-270—Filed September 29, 2017, 2:34 p.m., effective September 30, 2017]

Effective Date of Rule: September 30, 2017.

Purpose: Reopens the Wallace River to all angling.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000L, 220-312-04000U and 220-312-04000X; 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 Wallace River was closed September 16, 2017, to ensure that Chinook broodstock goals were met at the Wallace River Hatchery. This emergency rule is needed to reopen the Wallace River angling now that Chinook broodstock goals have been met. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: September 29, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000X Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective September 30 through November 30 2017, it is permissible to fish in those waters of the Wallace River from the mouth to 200 feet upstream of the hatchery water intake to the salmon hatchery. Unless otherwise amended, all permanent rules remain in effect:

Daily limit of three coho; release Chinook, pink, and chum salmon.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 220-312-04000L Freshwater exceptions to statewide rules—Puget Sound. (17-153)

The following section of the Washington Administrative Code is repealed effective September 30, 2017:

- WAC 220-312-04000U Freshwater exceptions to statewide rules—Puget Sound. (17-245)

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

- WAC 220-312-04000X Freshwater exceptions to statewide rules—Puget Sound.

WSR 17-20-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-269—Filed September 29, 2017, 2:36 p.m., effective October 2, 2017]

Effective Date of Rule: October 2, 2017.

Purpose: Amends commercial salmon rules for Willapa Bay.

Citation of Rules Affected by this Order: Amending WAC 220-354-250.

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

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

Reasons for this Finding: This emergency rule is needed to lift the restriction that chum salmon must be placed in an operating recovery box prior to being released into the bay/river. The recovery box is prioritized for unmarked Chinook and steelhead encounters. The projected forecast of chum in Willapa Bay is likely to lead to densities occurring in the recovery box that might be detrimental to the recovery of

the prioritized species. 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 the Request of a Non-governmental 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: September 29, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-354-25000A Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, effective October 2, 2017, until further notice, the restriction that all chum must be placed in an operating recovery box is rescinded.

WSR 17-20-059

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-272—Filed September 29, 2017, 3:45 p.m., effective October 2, 2017]

Effective Date of Rule: October 2, 2017.

Purpose: Amends freshwater fishing rules for Cowlitz River.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

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 return of fall Chinook to the Cowlitz Salmon Hatchery so far this year has been well below the forecast. Washington department of fish and wildlife projects that with the current salmon fishing regulations on the Cowlitz River, not enough fall Chinook will reach the hatchery to meet egg take goals. Closing the Chinook salmon fishing season in the Cowlitz River will increase the number

of hatchery fish available for broodstock and ensure future hatchery returns. 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 the Request of a Non-governmental 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: September 29, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 20-312-03000I Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 20-312-030, effective October 2, 2017, until further notice, it is unlawful to retain Chinook salmon in those waters of the Cowlitz River from the mouth to the Barrier Dam.

WSR 17-20-060

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed September 29, 2017, 3:48 p.m., effective October 2, 2017]

Effective Date of Rule: October 2, 2017.

Purpose: Amends recreational fishing rules for the North Fork Toutle and Green rivers in Cowlitz County.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

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 provisions of this rule are necessary because the return of fall Chinook to the Toutle Hatchery so far this year has been well below the forecast. The Washington department of fish and wildlife projects that with the current salmon fishing regulations on the North Fork Toutle and Green rivers, not enough fall Chinook will reach

the hatchery to meet egg take goals. Closing the Chinook salmon fishing season in these two rivers will increase the number of hatchery fish available for broodstock and ensure future hatchery returns. 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 the Request of a Non-governmental 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: September 29, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-03000J Southwest—Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 220-312-030, effective October 2, 2017, until further notice, it is unlawful to retain Chinook salmon in waters of the North Fork Toutle River and the Green River (Cowlitz Co.).

WSR 17-20-075

EMERGENCY RULES

DEPARTMENT OF CORRECTIONS

[Filed October 3, 2017, 9:02 a.m., effective October 16, 2017]

Effective Date of Rule: October 16, 2017.

Purpose: The purpose of this emergency amendment to WAC 137-80-010, is to pilot and test changes to specific correctional industries Class IV and V work programs. The department intends to allow for public comment and input before making final and formal revisions to chapter 137-80 WAC.

Citation of Rules Affected by this Order: Amending WAC 137-80-010.

Statutory Authority for Adoption: RCW 72.01.090, 72.09.100.

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 purpose of this temporary emergency rule is to preserve the public health, safety and general welfare by allowing the secretary to authorize pilot changes in Class IV and V work programs to immediately respond to highly publicized health and safety risks from the accumulation of rubbish in local communities and respond to other community service needs that also promote public health, safety and general welfare. The pilot projects will be administered under conditions that are in some ways less restrictive than the department's current chapter 137-80 WAC.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 16, 2017.

Stephen Sinclair
Secretary

AMENDATORY SECTION (Amending WSR 15-20-010, filed 9/24/15, effective 1/1/16)

WAC 137-80-010 Purpose. (1) These rules and regulations are adopted pursuant to and in accordance with chapter 34.05 RCW. The purpose is to provide standards and procedures necessary to ensure the implementation of a comprehensive offender work program. (See RCW 72.09.015(32).) The headings and captions for the above classes are used for convenience only and do not constitute a part hereof. The use of the term "class" to identify a work program does not restrict the department to a singular description of an offender work program within that class or the use of other offender work programs authorized by separate statute.

(2) The secretary may adopt policies providing further guidance for establishing, among other things, offender participation eligibility and security requirements for each class of work program. The secretary may pilot temporary changes to correctional industries' Class IV and V work crew programs for the preservation of public health, safety or general welfare and in response to other community service needs that also promote public health, safety and general welfare. The benefits of such changes will be assessed through a limited number of work crew agreements that may not be subject to all of the current provisions of this chapter.

WSR 17-20-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-264—Filed October 3, 2017, 2:36 p.m., effective October 6, 2017, 12:01 p.m.]

Effective Date of Rule: October 6, 2017, 12:01 p.m.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000F; and amending WAC 220-330-160.

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. 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 the Request of a Non-governmental 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: October 3, 2017.

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

NEW SECTION

WAC 220-330-16000F Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. October 6, 2017 through 11:59 p.m. October 7, 2017, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. October 6, 2017 through 11:59 p.m. October 7, 2017, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. October 6, 2017 through 11:59 p.m. October 7, 2017, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. October 6, 2017 through 11:59 p.m. October 7, 2017, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 8, 2017:

WAC 220-330-16000F Razor clams—Areas and seasons.

WSR 17-20-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-275—Filed October 3, 2017, 3:06 p.m., effective October 7, 2017]

Effective Date of Rule: October 7, 2017.

Purpose: Amend recreational crab fishing rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000B; and amending WAC 220-330-040.

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 to reopen the recreational crab fishery in the specified marine areas and adjust the open days per week to allow for inclement winter weather. Available harvest shares allow the areas to be opened in this rule. 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 the Request of a Non-governmental 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: October 3, 2017.

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

NEW SECTION

WAC 220-330-04000B Crab—Areas and seasons.

Notwithstanding the provisions of WAC 220-330-040:

(1) Effective October 7 through December 31, 2017 it is permissible to fish for crab for personal use seven days a week in the following Marine Areas:

- a) Marine Areas 4 east of the Tatoosh-Bonilla line
- b) Marine Area 5
- c) Marine Area 6
- d) Marine Area 7
- e) Marine Area 8-1
- f) Marine Area 8-2

g) Marine Area 9, except the waters between the Hood Canal Bridge to a line connecting Foulweather Bluff to Olele Point.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2018:

WAC 220-330-04000B Crab—Areas and seasons.

WSR 17-20-098

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed October 3, 2017, 4:44 p.m., effective October 3, 2017, 4:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this action is to amend a section of a rule filed on January 19, 2016, as WSR 16-03-064. This action will amend the permanent rule in section 907 Fire Alarm and Detection Systems. The state building code council convened a technical advisory group to develop this amendment to provide options for compliance with current codes and safe school law. The state building code council is currently in a public comment period to consider adoption of this amendment as a permanent rule. Pending the permanent rule, this amendment is adopted as an emergency, temporary rule.

Citation of Rules Affected by this Order: Amending WAC 51-50-0907.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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

Reasons for this Finding: The 2016 legislature took action to modify the requirements of this section under ESHB 2380.SL/New Section 6012. A new section is added to 2015 3rd 32 sp.s. c 3 to read as follows: To avoid unnecessary duplication of infrastructure installation and reduce school construction costs funded through the school construction assistance program in this budget, the state building code council adopted emergency amendments as directed by the legislature to provide buildings classed as E occupancies, as defined in the state building code, are not required to install an emergency voice alarm system as defined in the 2012 International Building Code and International Fire Code section 907.2.3. The school district must comply with RCW 28A.320.126 to develop an emergency response system using evolving technologies. The state building code council technical advisory group worked with stakeholders to develop amendatory language for emergency and permanent rule making.

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 [1], Repealed 1 [0].

Number of Sections Adopted at the Request of a Non-governmental 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: May 12, 2017.

Steve Simpson
Chair

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

~~[F] 907.2.3 Group E. ((A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~

- ((EXCEPTIONS: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
 2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
 3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
 3.1 Interior corridors are protected by smoke detectors.
 3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
 3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
 4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.--))

Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or
2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:
 - 2.1 The ability to broadcast voice messages or customized announcements;
 - 2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;
 - 2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;
 - 2.4 The ability for two-way communications;
 - 2.5 The ability for individual room calling;
 - 2.6 The ability for a manual override;
 - 2.7 Installation in accordance with NFPA 72;
 - 2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and
 - 2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

- EXCEPTIONS:
- A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
 - Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:

3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or

3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).

4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

- 4.1 Interior corridors are protected by smoke detectors.
- 4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
- 4.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

- 5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
- 5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.
- 5.3 Manual activation is provided from a normally occupied location.

[F] 907.2.3.1 Sprinkler systems or detection. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

[F] 907.2.6 Group I. A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

- EXCEPTIONS:**
1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
 2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

[F] 907.2.6.1 Group I-1. An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS: 1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
2. Smoke detection is not required for exterior balconies.

[F] 907.2.6.4 Group I-4 occupancies. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

[E] 907.5.2.1.2 Maximum sound pressure. The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

[E] 907.10 NICET: National Institute for Certification in Engineering Technologies.

907.10.1 Scope. This section shall apply to new and existing fire alarm systems.

907.10.2 Design review. All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction. (Effective July 1, ((2017)) 2018.)

907.10.3 Testing/maintenance. All inspection, testing, maintenance and programing not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms. (Effective July 1, ((2017)) 2018.)

Reviser's note: The brackets and enclosed material in the text of 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 17-20-104
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed October 4, 2017, 8:53 a.m., effective October 4, 2017, 8:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The WAC is being amended to implement Title V, Sec. 5007 the 21st Century Cures Act to allow for a person to create his or her own D4A special needs trust. The agency is also fixing references to incorrect WAC citations in WAC 182-516-0100.

Citation of Rules Affected by this Order: Amending WAC 182-516-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 21st Century Cures Act, Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts (Section 1917 (d)(4)(A) of the Social Security Act/42 U.S.C. 1396p (d)(4)(A)).

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 incorporate changes prompted by Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts of the 21st Century Cures Act, signed on December 13, 2016. This emergency is necessary to continue the current emergency rules filed on June 7, 2017, under WSR 17-12-108 while the permanent rules are being finalized. The agency has completed an agency-wide review and is proceeding to the external stakeholder review.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 4, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0100 Trusts. (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993, the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under ~~((subsection (3))~~(a) of this subsection then it is considered either:

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC ~~((388-513-1363, 388-513-1364 or 388-513-1365))~~ 182-513-1363.

(c) If a revocable trust doesn't meet the description under ~~((subsection (3))~~(a) of this subsection:

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under ~~((subsection (4))~~(d)(ii) of this subsection, are considered a transfer of client assets.

(e) For an irrevocable trust established as described under ~~((subsection (4))~~(a) of this ~~((section))~~ subsection:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of the distributions from the trust.

(d) For a revocable trust established as described under ~~((subsection (5))~~(a) of this ~~(section)~~ subsection:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under ~~((subsection (5))~~(d)(ii) of this subsection, are considered a transfer of client assets.

(e) For an irrevocable trust established as described under ~~((subsection (5))~~(a) of this ~~(section)~~ subsection:

(i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:

(A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;

(ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(6) Trusts established on or after August 11, 1993, are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(7) Trusts established on or after August 1, 2003, are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050) and the trust:

(i) Is irrevocable;

(ii) Is established for the sole benefit of this person by ~~((their))~~ the person's parent, grandparent, legal guardian, ~~((or))~~ a court, or after December 13, 2016, the person; and

(iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ~~((388-475-0050))~~ 182-512-0050), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever

comes first, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsections (6)(a) and (7)(a) of this section continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) of this section if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC ((~~388-513-1363 and 388-513-1364~~) 182-513-1363 and the transfer is made to the trust before the individual reaches age sixty-five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6) of this section, the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) of this section to be unearned income.

(11) The department will only count income received by the client from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC ((~~388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366~~) 182-513-1363 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.